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...or financially interested in the action.

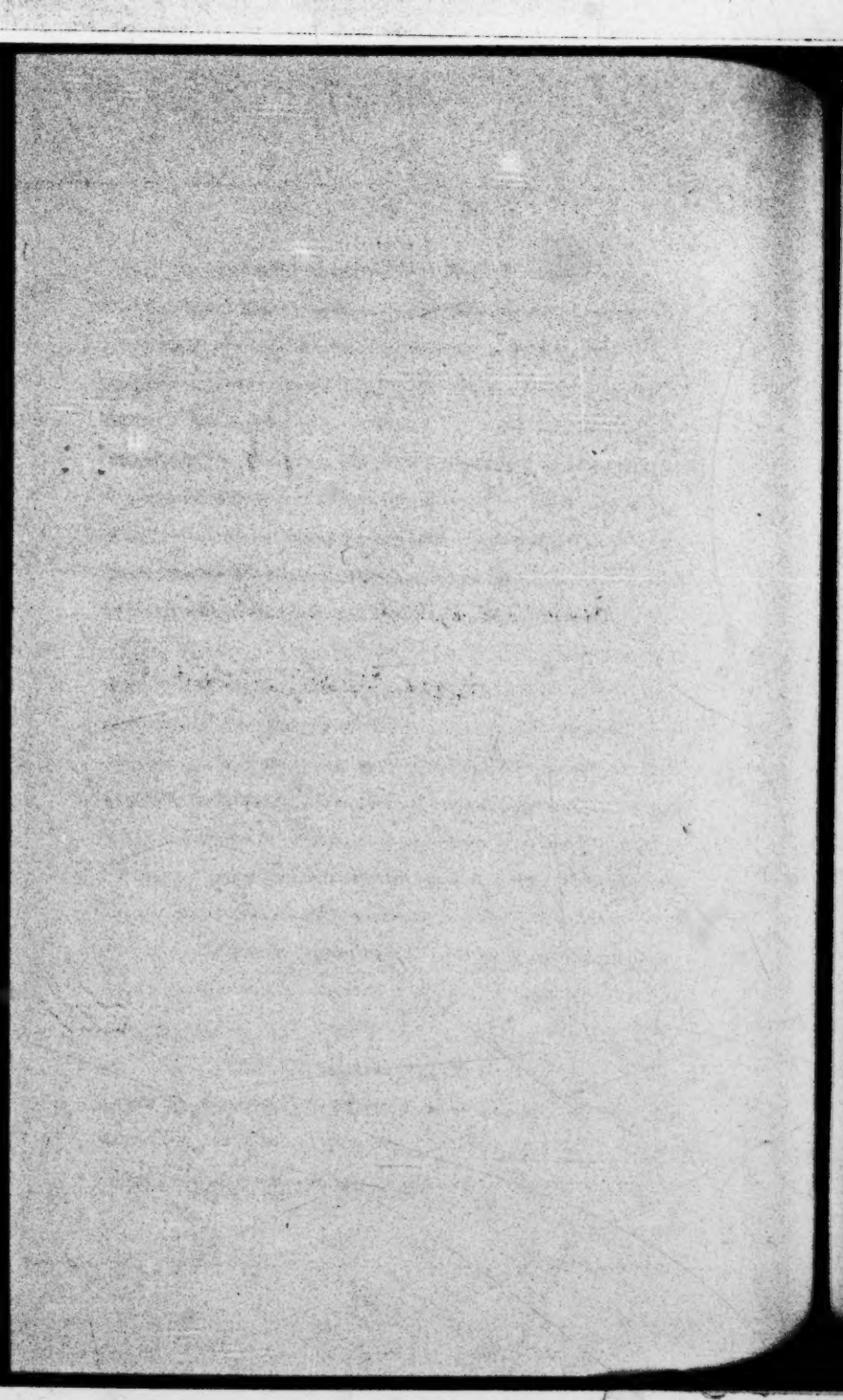
IS WITHOUT DUBIOUS, I have personally set my hand
and affixed my notarial seal this 10th day of
February, A. D., 1923.

ELMER FRED ROBERTS PUBLIC
NOTARY FOR HILLMAN COUNTY, NEBR.

My Commission Expires June 1, 1925

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CHICAGO, ILL.



THE STATE OF TEXAS, COUNTY OF DALLAS, BEFORE ME, the undersigned authority, on this day personally appeared _____

known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

My commission expires _____

Witness my hand and seal of office this _____ day of _____, 19____.

Notary Public in and for the State of Texas

My commission expires _____

Notary Public in and for the State of Texas

My commission expires _____

Notary Public in and for the State of Texas

My commission expires _____

Notary Public in and for the State of Texas

ORAL DEPOSITION OF CHARLES C. MATTHEW

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public in and for the State of Texas

My commission expires _____

Notary Public in and for the State of Texas

My commission expires _____

Notary Public in and for the State of Texas

My commission expires _____

Notary Public in and for the State of Texas

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Notary Public in and for the State of Texas

My commission expires _____

Notary Public in and for the State of Texas

My commission expires _____

Notary Public in and for the State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL

VS.

NO. A-71-CA-142

EDEN BARNES, ET AL

DIANA REGESTER, ET AL

VS.

NO. A-71-CA-143

BOB BULLOCK, ET AL

JOHNNY MARRIOTT, ET AL

VS.

NO. A-71-CA-144

PRESTON SMITH, ET AL

VAN HENRY ARCHER, JR.

VS.

NO. A-71-CA-145

PRESTON SMITH, ET AL

APPEARANCES

Mr. David E. Richards, of Austin, Texas,

Appearing on behalf of Plaintiffs,
Diana Regester, et al

Mr. Robert M. Greenberg, of Dallas, Texas,

Appearing on behalf of Plaintiffs,
Johnny Marriott, et al

Mr. Mickey McGuire

Mr. Nathan U. Hason

of San Antonio, Texas,

Appearing on behalf of Plaintiffs,
Van Henry Archer, Jr., et al

APPEARANCES - (Cont'd)

Mr. Stuart Meikin }
 Mr. David Berg } Of Houston, Texas,

Appearing on behalf of Plaintiffs,
 Curtis Graves, et al

Mr. Walter Irvin }
 Mr. Cleo Steele } Of Houston, Texas,

Appearing on behalf of Plaintiff
 Intervenor, Washington, et al in the
 Tyler Case

Mr. Ed Ylar, Jr., of San Antonio, Texas,

Appearing on behalf of Intervenor in
 the Tyler Case

Mr. E. Brice Cunningham, of Dallas, Texas,

Appearing on behalf of Intervenor,
 Conrad, et al

Mr. Karl Luna, of Dallas, Texas,

Appearing on behalf of Defendant,
 Roy Orr

Mr. Sam McDaniel, Assistant Attorney General
 of Texas, Austin, Texas,

Mr. Al Curry, of the firm of Fulbright,
 Crooker, Freeman, Bates & Jaworski, of Houston,
 Texas,

Appearing on behalf of Defendants

- - - - -

1 THE DEPOSITION of GRANTON C. MARTIN, a
 2 witness of lawful age, taken on behalf of the
 3 Plaintiffs, Diana Bagster, et al, in the above
 4 entitled cause, pending in the District Court of the
 5 United States for the Western District of Texas, Austin
 6 Division, pursuant to the notice heretofore issued and
 7 the agreement hereinafter set out, before Harry L.
 8 Wear, a notary public in and for Travis County, Texas,
 9 at the Supreme Court Building, in the City of Austin,
 10 Travis County, Texas, on the 27th day of December,
 11 1971.

12 MR. RICHARDS: Do you want to consider,
 13 Sam, that this is taken by -- I guess it is taken
 14 pursuant to notice; inasmuch as General Martin is a
 15 defendant, do you -- he is a defendant in some of the
 16 cases?

17 GENERAL MARTIN: I am a defendant in some,
 18 and not in some of the others.

19 MR. RICHARDS: I didn't know whether Sam
 20 wanted to treat it just by notice, or how you wanted
 21 it.

22 MR. McDaniel: I have no objection to
 23 treating it as if it were taken by notice, and my only
 24 thing is, I do want -- I am not going to waive signa-
 25 ture on them. Other than that, why, we can agree that

1 it can be used and that you can reserve your objections
2 until the time of trial, as far as I am concerned.

3 MR. RICHARDS: All right. And so we --
4 do I understand that we are all in agreement that we
5 will waive the provisions of the Federal Rules that
6 require the witness to be absent in order to use the
7 deposition, that the deposition may be used -- that we
8 will waive the provisions of the Federal Rules that
9 require the witness to be unavailable in order to use
10 this deposition, and that this deposition may be used
11 as testimony either before the Court or before the
12 Master; is that correct, without proving General
13 Martin's unavailability?

14 MR. McDANIEL: I have no objection to
15 that, although I don't want that stipulation to
16 indicate that I am agreeing to present General Martin's
17 testimony strictly by deposition.

18 MR. RICHARDS: I understand. You are not
19 waiving the right to call him as a witness?

20 MR. McDANIEL: That is correct. That is
21 correct.

22 MR. LUNA: For the State Chairman, we do
23 not waive our right to cross-examine him at the trial,
24 and in the event he should not be available at trial,
25 we do not then waive the use of this -- if he is

1 available, but is not placed on the witness stand, we
2 don't waive our right to cross-examine him at the trial.

3 MR. RICHARDS: Well, let me be sure I
4 understand. Suppose that General Martin is not called
5 as a witness at the time of trial, what is your
6 position with respect to the use of this deposition at
7 the time of trial?

8 MR. LUNA: I reserve the right to examine
9 him in person.

10 MR. RICHARDS: Well, then, at least you are
11 on notice from me that it is going to be my position
12 that if you have questions to ask General Martin, you
13 had better ask them today, because I will intend to
14 offer this deposition as evidence at the time of trial,
15 and you are here pursuant to notice, and at least you
16 have the opportunity to examine him, and it will be my
17 position, if you don't afford yourself that opportunity
18 today, that we will offer the deposition as first-hand
19 testimony.

20 MR. LUNA: I understand.

21 MR. RICHARDS: All right. Sure.

22 MR. LUNA: I may ask him some questions
23 today, but I am simply not waiving any of my rights
24 by participating in this deposition that I don't auto-
25 matically waive thereby.

1 MR. RICHARDS: Is there anybody else who
2 has get a position, attorneys who are present who want
3 to put any position of record in the case?

4
5 CRAWFORD C. MARTIN,
6 a witness named in the notice heretofore issued,
7 being first duly sworn in the above cause,
8 testified on his oath as follows:

9 CROSS EXAMINATION

10 Questions by Mr. Richards:

11 Q I guess, for the record, at least, your name and
12 title?

13
14 A I am Crawford Martin. I am Attorney General of
15 Texas. I have been Attorney General of Texas since
16 the first day of January, 1967, and I am the Attorney
17 General as of this date.

18 Q Before becoming Attorney General, what was your
19 position?

20 A I was Secretary of State of the State of Texas from
21 January, 1963 until I resigned in the middle of March
22 of '66 to make the race for Attorney General.

23 Q So, you were Secretary of State from January of '63
24 through mid-'66?

25 A About March of '66, when I resigned as Secretary of
State and made the race for Attorney General, and, of

1 course, I took office in January of '67 -- I mean,
2 of '63 -- of '67. Excuse me. I will get it right
3 in a minute.

4 Q I guess before that time you were a State Senator
5 from Hill County or Millsboro?

6 A That's right. I was elected State Senator in
7 November of '49, and I served up until, I think, two
8 days before I was sworn in as Secretary of State.

9 Q Roughly fifteen years in the Texas Senate?

10 A That was about fourteen years in the Senate.

11 Q And you are, of course, a practicing lawyer -- well,
12 at least a lawyer admitted to the Bar of the State of
13 Texas?

14 A Correct.

15 Q And have engaged in the private practice of law at
16 times --

17 A Prior to my coming to Austin I engaged in the private
18 practice of law from 1939 -- I got my license in
19 1939 -- up until I came, moved to Austin in January
20 of '63, with the exception of three and a half years
21 which I was in the Service.

22 Q Yes, sir. The questions that at least I will be
23 asking here will be directed, I think, in the main,
24 at the procedures of the Legislative Redistricting
25 Board as regards the reapportionment of the Texas

1 House as distinguished from the Texas Senate.

2 A Yes, sir.

3 Q You served as Chairman of the Legislative Redistricting
4 Board; is that correct?

5 A That is correct, except for the first meeting, and I
6 was absent.

7 Q Right.

8 A The first meeting, and I was elected Chairman during
9 my absence, and I took over as Chairman at the second
10 meeting of the Board.

11 Q How many meetings did the Board have altogether?

12 A It was -- I will have to count them up. There was the
13 first meeting, and we had a second meeting in the old
14 Supreme Court Chamber. We had two there. We had one
15 meeting down in the Senate Hearing Room, and then we
16 had the meeting in which the Senate Bill was presented,
17 and then we had another meeting in which the House Bill
18 was presented and signed. When I say "presented," it
19 was presented and signed by at least three members of
20 the Board. I believe that is the number.

21 Q That would be five meetings, I believe, if I counted
22 correctly?

23 A That is correct, sir.

24 Q These were -- and each of these meetings were public
25 meetings; is that correct?

1 A Yes, sir, the public was invited. Public notice was
2 posted in the hall of the Capitol, and newspaper
3 notice was given in each case.

4 Q Were there any meetings of the Board other than these
5 five public meetings?

6 A No, sir.

7 Q What procedures, if you could tell us, did the Board
8 follow in gathering the evidence that it relied upon
9 in promulgating the House Redistricting Plan?

10 A When the Supreme Court in its decision declared that
11 the Board was in session, we immediately sent out
12 notice to the newspapers and to those people who had
13 written in, sent out by letter and by newspaper
14 columns, and television and radio, that the Board
15 would meet and we would hear evidence, and then as
16 to the time and place, we served notice by letter or
17 by telephone to those who had indicated they wanted
18 to be heard, so that they could come, and, as
19 previously stated, we posted the notices required by
20 law; even though we are not certain that the law,
21 Open Meeting Law, applied to this Constitutional
22 Board, we did comply with -- we posted notices in
23 the Secretary of State's Office and in the hall next
24 to the Secretary of State's Office, and we also gave
25 notice or press release to the pressroom and to the

1 wire services and others that there would be a hearing,
2 and all were welcome to be heard, and the first
3 session that I had, I served notice from the Bench,
4 as Chairman, that we would hear any and everyone, and
5 there would be no time limit placed on their time or
6 the number of witnesses that anyone might want to
7 present.

8 Q All right. And I take it that with respect to the
9 House, at least, two hearings were held; is that
10 correct?

11 A Yes, sir.

12 Q And I think the third meeting was when you promulgated
13 the ---

14 A The House Reapportionment Plan; correct, sir.

15 Q Well, then, is it fair to say that all of the evidence
16 that the Board had before it in promulgating the
17 House Plan was that evidence developed at the two
18 hearings that the Board held?

19 A No, sir, that wasn't all of the evidence. We took
20 into consideration the letters and correspondence and
21 maps and the various members of the Legislature and
22 individuals who would present things to us during the
23 time that it was under consideration. We considered
24 that in addition to the sworn testimony -- well, yes,
25 I believe it was sworn testimony in front of the

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11

Commission itself.

Q All right. And then I take it you, as Chairman of the Board, have maintained a file or record of the written communications that were made to the Commission?

A Yes, sir; and then the minutes and the transcript of what was said was taken by a shorthand reporter and was filed with the Secretary of State.

MR. RICHARDS: You were going to make that available for us, Sam. Can you give us that now while we are in the course of the deposition, that is, the written record?

MR. McDANIEL: We do not have the written record.

MR. RICHARDS: I don't mean the record; I mean the file of the communications with the Board.

MR. McDANIEL: I don't know whether we have pulled that or not. Have we?

A I couldn't answer that question.

MR. McDANIEL: We haven't had anybody here over the Holidays.

MR. RICHARDS: Well, you have had somebody around to prepare motions and orders. Maybe you can find somebody now to pull that file while we are in the course of the deposition, which was part of our

1 request. Would you mind?

2 MR. McDANIEL: If you want to hold up the
3 deposition.

4 MR. RICHARDS: I don't think -- I think we
5 can proceed with the deposition while somebody surely
6 on your staff can pull together that information.

7 MR. McDANIEL: Well, all right. Just don't
8 proceed with it in my absence.

9 MR. RICHARDS: Well, while we are on the
10 record, you committed to me and to Mr. Eason, as I
11 recall, in the Federal Court last week, that this
12 would be available to us. Is that your recollection,
13 Mr. Eason?

14 MR. McDANIEL: I said that I would make it
15 available to you. I did not say that it would be
16 available at this particular hour on Monday morning.

17 (Thereupon, a brief recess was had,
18 after which the proceedings were
19 resumed as follows:

20 MR. McDANIEL: I am told that these are
21 they.

22 MR. RICHARDS: Thank you, Sam.

23 MR. McDANIEL: Uh-huh. Gentlemen, we don't
24 mind how much you look through them. We don't want
25 any of them taken out of here. We will be happy to

have any of them copied. (Inaudible) my block (Inaudible)

MR. RICHARDS: Sure. Oh, yes. We wouldn't remove them. We would just simply ---

A In addition to that, we -- I don't know whether that contains some maps. We received some various and sundry maps, and they are around here somewhere. I will try to find them for you this morning.

MR. RICHARDS: Okay.

A And they are not -- I did not receive any -- most of the maps, nearly all of them were just parts of the State.

Q Sure, people interested.

A People, Representatives or Senators who -- well, we are talking about Representatives this morning.

Representations who desired their District to be laid out in a certain manner, and we received those.

I don't think they are in this, because they are rolled up. They are around here somewhere.

Q Then, if I summarize it correctly, the evidence that the Board, as you understood it, took into consideration was that which was produced the two days of public hearing, and then evidence that was contained in or contained in communications, written communications received by the Board, either from interested citizens or legislators; is that correct?

1 A Yes, sir.

2 Q As to the latter category, I understand that you have
3 now produced for us the file which contains all of
4 those written communications; is that correct?

5 A Well, of course, so far as I am concerned, I don't
6 keep files. As far as I know, if my file clerk says
7 that's it, why, that's it. I haven't seen it. In
8 other words, the way I operate my office is, things
9 come in, and I put them in the file basket, and as far
10 as I know, this is it.

11 Q All right.

12 A There could be some other letters that may have been
13 mis-filed, but as far as I know, that's it.

14 Q And there is, of course, the one other exception that
15 you have already indicated to us, the rolled up maps,
16 you did not keep ---

17 A They are not in here. They are around here somewhere,
18 but I will try to produce those for you, if you want
19 them. Most of them, with one or two exceptions, were
20 just maps in which a Representative came up or mailed
21 to me how he would like to have his District laid out,
22 and, if I remember correctly, I think there were
23 twenty-three of these.

24 Q Twenty-three such maps received or ---

25 A Well, either maps or parts of maps.

Q Parts of maps?

A Yes. As far as I know, I don't know that I have twenty-three rolled up maps. Part of them were folded and put in here, that I wasn't -- I mean, I can't tell you the number, but I do remember the figure twenty-three were the ones that I did receive from Representatives.

Q All right. The file that you have produced for us just this moment, does it relate to both the House and Senate, or just the House?

A I couldn't tell you.

Q All right, sir.

A This is on reapportionment, and some of the letters they wrote about both; some of them wrote about different ones, and as far as I am concerned, we didn't try to segregate that from it. So far as I know, the clerk's instruction was just to keep this in a separate file. This did not go into our regular files. This was kept separately, and as far as I know, this is what was done in.

Q Probably includes both House and Senate?

A I think some of it is, yes, sir. You would have to pick it out, and, in other words, some citizens that-- I didn't mean to confine that just to Representatives, that twenty-three were just Representatives. When the

1 citizens write, well, they write about Senatorial
2 Districts, and a Representative District, and some
3 of them didn't, and some of them did.

4 Q Okay. Then, so, again, we have the two categories,
5 I take it, of evidence or contentions received, and
6 that is the testimony in the two days of hearings,
7 and then the material contained in the files that
8 you have now produced. Was there any other evidence
9 that you know of that was taken by the Board and
10 considered in formulating its decision?

11 A Nothing except, of course, conversations with the
12 people who were interested in the matter, oral
13 conversations. I can't speak for the Board, but I
14 am sure that there were conversations between members
15 of the Board and citizens.

16 Q At least, insofar as you were concerned, in addition,
17 then, to the matters that are of record ---

18 A Yes, sir.

19 Q --- or in the files, there were oral communications
20 that you had with various people that you took into
21 consideration in reaching your decision?

22 A It was my opinion at that time, and I still hold the
23 opinion that this was not a court of record, and we
24 were not a legislative body, and we more or less did
25 like the Federal Courts do sometimes. We just decided

that we would take evidence as it -- in other words, all evidence that was presented to us, and base our findings on what was presented. ---

Q So, actually, ---

A --- what came to our attention.

Q So, actually, sort of neither fish nor fowl, neither a legislative body nor a court of record; is that correct?

A That is correct. It is a unique body as far as law is concerned.

Q And it was on that basis and that opinion that the Board proceeded; is that correct?

A Correct, sir.

Q Now, I think we already know from what you have told us, and I think from contemporaneous newspaper accounts, I gather that the Board itself never convened except in public; is that correct?

A That is correct, sir.

Q How were the deliberations of the Board, as you see it, how were they carried out?

A Well, deliberations of the Board were -- and, of course, I can't speak for all of the members; I can just speak for myself, ---

Q Okay.

A --- that's all I could speak for -- was that I

1 consulted with other members of the Board, the other
2 four of them, informally. I believe all of them
3 visited my office on one occasion or the other, and
4 I visited in the office of, I believe, all of the
5 other members with the exception of the Speaker, and
6 we had various telephone conversations, and the great
7 bulk of the work was done by staff members. My
8 staff, I had two Assistant Attorneys General assigned
9 to it full time, and then the Legislative Council,
10 I don't know how many they had. It seems to me they
11 had two or three, and the Lieutenant-Governor had at
12 least two staff members assigned to that, and all of
13 this work was carried on in that particular manner.

14 Q You say, then, as I understand it, that you consulted
15 with three out of the four other Board members ---

16 A I consulted with all of them. I limited it to the
17 Speaker. The Speaker came to see me, I believe, on
18 two occasions. I did not visit his office. In other
19 words, we exchanged visits between offices, and if I
20 misled you, I am sorry. I went to all of them's
21 offices with the exception of the Speaker's Office.
22 I don't recall going there. I might have, but I don't
23 recall it right now.

24 Q Was there any particular reason why you didn't go to
25 the Speaker's Office?

1 A No, sir, it just didn't come in handy. In other
2 words, the Speaker was over here when he desired to
3 speak to me or when I desired to speak to him. He
4 always came to my office.

5 Q I see.

6 A I talked to him over the telephone.

7 Q Did you -- were there any studies, articles of either
8 academic or political nature that you took into
9 account in addition to the evidence that you were
10 talking about?

11 A Oh, yes, sir. We ---

12 Q Do I make myself clear?

13 A Yes, sir. As far as the Chaven case was concerned,
14 well, we did Xerox that and presented that to the
15 various members of the -- all of the members of the
16 Board, and the companion cases, I don't recall the
17 style of them, those that came out at the same time,
18 we Xeroxed all of that, and then there was several
19 articles -- I don't recall whether they were Law Review
20 or something to do -- written by legal scholars, that
21 we circulated among the Board.

22 Q Do you have a way, I guess, of pinpointing which
23 articles you circulated?

24 A No, sir, I am sorry, I don't. I don't recall that
25 right now, and it seems like to me there was maybe one

1 or two of those that had been written by people that
2 we undertook to try to -- in other words, this really
3 was more work on my part than it was on theirs,
4 because, in a way, I wore two hats. I was legal
5 counsel for the Commission, as well as Chairman, and
6 when something came in that we felt like was guide-
7 lines as far as the law was concerned, we made this
8 available to the other members.

9 Q Was there a file maintained of correspondence or
10 memoranda passing between you, as Chairman, and other
11 members of the Board?

12 A No, sir. So far as I know, there was no file made of
13 that.

14 Q Was that correspondence retained someplace?

15 A I am just sorry. I can't answer that. The way this
16 office is run, I more or less an administrator, and
17 there are papers on my desk, but all papers that come
18 and go, they go by baskets, and I just can't tell you
19 that. I just don't have any knowledge.

20 MR. RICHARDS: Sam, is this something that
21 you got into to see whether there is a separate file?

22 MR. McDANIEL: No, and I have no recollection
23 of any such correspondence back and forth, which does
24 not mean that it was not made. It merely means that
25 it wasn't in my bailiwick to handle.

1 A Let me say this, when you are talking about corres-
2 pondence. I did not sit down and write a memo to
3 these people. All I am talking about is articles
4 that were -- in other words, those cases that I talked
5 about, and articles that might be pertinent to the
6 matter. They were just Xeroxed and sent through, and
7 I don't even know that -- if I have a copy of all of
8 them. I am not familiar with that, because -- they
9 could be in this file.

10 Q (By Mr. Richards) All right. Well, these are the ones
11 you described to us, and then they are essentially
12 matters of court decision or legal comment?

13 A What I am talking about is matters of law or legal
14 comment, and not evidence, is what I am talking about.

15 Q And any other in the way, then, of evidence of a kind,
16 that is, studies of a statistical nature, studies of--
17 studies of a statistical nature?

18 A Yes, sir. Some of that we did not -- that particular
19 part of it, I did not accumulate that. That was
20 accumulated by the Legislative Council and was circu-
21 lated to me by the Legislative Council, statistics,
22 census tracts and breakdowns of that sort, and the
23 figures -- in other words, what was the ideal district,
24 you know, ---

25 Q Uh-huh.

1 A --- what figure, all of that was furnished by the
2 Legislative Council, but it was, insofar as the
3 mathematics was concerned, it was checked by my staff
4 members, and there was no disagreement on any of that
5 statistical matter, and this is purely statistics.

6 This was presented to us, or to me, just as general
7 evidence by the Legislative Council.

8 Q Is that essentially just census data; is that correct?

9 A Mostly census data. In other words, that was the
10 thing, and they did furnish us blank maps, and I
11 think also they presented to us maps of the apportion-
12 ment as it exists at the present moment -- I mean, as
13 it existed at that particular time, in other words, as
14 the Districts are right now. This was presented to
15 us as information so that we could take and see where
16 the Districts were presently laid out.

17 Q Did you rely in any measure upon the Districts as
18 had been drawn by the House in the bill that was
19 invalidated by the Supreme Court?

20 A No, sir. We -- a map was available in this office on
21 that, because we, as you know, tried this matter in
22 the mandamus in the Supreme Court, and we had a map
23 of that, and Mr. Pat Bailey and Mr. Melvin Corley had
24 that map, and I had one or two conversations with
25 them concerning the ---

1 Q That lawsuit?

2 A --- apportionment. In other words, I want you to know
3 that was not part of the Commission. This was at the
4 time that the -- let me get this straight so that the
5 record will be understood, so that you will understand.

6 Q Sure.

7 A At the time that the Senate hearings were begun, the
8 House had not been declared unconstitutional. So
9 this was presented during that particular time, and
10 they -- I believe prior to the second meeting, the
11 Court had declared its judgment, but no opinion had
12 been filed at the second meeting, and Mr. Corley and
13 Mr. Pat Bailey handled that matter for me, and they
14 showed me the map, but insofar as laying out the new
15 Districts, it had no real bearing on the bill that we
16 wrote.

17 Q Okay. So, if I can, then, summarize what you have
18 just told us, the map of the original House Bill that
19 was invalidated by the Supreme Court was not relied
20 upon by you in formulating the new Districts?

21 A No, sir, it was just information that I had, and you
22 asked for all information I had, and I want to give it
23 to you, but we did not rely on that at all.

24 Q All right, sir. Thank you.

25 A This was declared invalid, and we just didn't go into

1 it any further.

2 Q You treated it as a nullity after that?

3 A That is correct, sir.

4 Q All right, sir. Now, turning now to matters that are
5 closer at hand, the Board elected to carve Harris
6 County into single-member districts, and, now, just
7 speaking for yourself as a member of the Board, did
8 you vote for carving Harris County into single-member
9 districts?

10 A There was no votes, as votes, taken on any of this
11 type of matter. As far as my concurrence in it being
12 into single-member districts, I don't think there
13 was any disagreement among the five members that
14 Harris County would be carved into single-member
15 districts.

16 Q Can you tell us what factors led you to accept this,
17 or led you to feel that carving Harris County into
18 single-member districts was a reasonable approach?

19 A Oh, I would say that there were one or two factors
20 involved. Mainly, this was the express wish of
21 practically all of those from Harris County, and,
22 number two, Harris County had a history of being
23 carved up into -- as the bill it is now operating
24 under and the Representatives now elected, was carved
25 into three districts along congressional lines, and

1 since Harris County had grown, those lines could not
2 be used, and so it had to flow over into neighboring
3 counties, and so the Supreme Court having handed
4 down the opinion which they did, that we had to stay
5 within the county lines, if at all possible, we
6 certainly couldn't use those lines as a basis, and so
7 they were disregarded, and then the lines were drawn
8 as single-member districts.

9 Q So, two principal factors, I think, then, you say, the
10 express wish of all of those of Harris County; is that
11 correct?

12 A Well, there may have been one or two letters. I
13 haven't -- you see, this has been some time.

14 Q Oh, I understand, but you are saying that ---

15 A But just practically unanimous. We didn't get anybody
16 from Harris County that wanted anything but the
17 single-member districts.

18 Q And by that you mean citizens, as well as ---

19 A Citizens, as well as ---

20 Q --- legislators?

21 A --- legislators, yes.

22 Q And then the other factor, I take it from what you
23 said, was the historical fact that Harris County had
24 been previously carved into three districts under the
25 1965 Apportionment; is that correct?

1 A Yes, sir, that is correct, sir.

2 Q Any other factors that you felt impelled you to ---

3 A Well, Harris County lends itself to easily laying
4 out these districts, in that it has a -- for a
5 metropolitan area, it has a smaller number of people
6 per square mile than the other metropolitan areas,
7 and it is just laid out in a -- well, it is -- the
8 layout of it, it is hard for me to explain, except
9 to say that the County has numerous highways going
10 out, and the population follows those highways, and
11 they have these different communities, and it lays
12 itself out easily to being carved into single-member
13 districts.

14 MR. EASON: Would you read that last answer,
15 please?

16 (Said answer was repeated as shown
17 above.)

18 A Maybe you misunderstood. I wasn't making the statement
19 that Harris County didn't have more population than
20 the other counties. Maybe I misled somebody. I was
21 talking about per square mile.

22 Q (By Mr. Richards) All right, sir. Are there any other
23 factors that you felt moved you toward the decision
24 that Harris County should be cut into single-member
25 districts?

1 A No, sir, not that I can think of.

2 Q All right. One of the issues before the Board was
3 the question of whether or not to divide Dallas
4 County either into individual member districts or
5 something less than countywide.

6 A Yes, sir.

7 Q Contemporaneous newspaper reports indicated that
8 Lieutenant-Governor Barnes, in fact, proposed that
9 the county be divided at least into three districts,
10 and that you opposed the division and opted for
11 retention of countywide legislative districts. Is
12 that accurate?

13 A No, sir, that is not accurate.

14 Q All right, sir. Would you tell me what ---

15 A The newspapers started that, and I did the best that
16 I could to eliminate it, but sometimes when the
17 newspaper reports get started a certain way, there is
18 nothing you can do about it. I at no time ever made
19 any statement to the Press that I was in favor of
20 single-member districts or multi-member districts
21 up until the time that they were drawn.

22 Q All right.

23 A That was -- it was just an erroneous report; as far
24 as what Mr. Barnes might have said, I am not acquainted
25 with that. I couldn't testify to that.

1 Q All right. Without regard to what was said in the
2 newspapers, did Lieutenant-Governor Barnes approach
3 you at any time during the course of the informal
4 deliberations of the Board and propose that a plan
5 be drawn to divide Dallas County into something other
6 than countywide legislative districts?

7 A Did he present a plan that ---

8 Q Yes.

9 A No, sir.

10 Q Formally or informally?

11 A No, sir, I received no plan like that.

12 Q Did he ever discuss with you the desirability of
13 carving Dallas County into something less than
14 countywide legislative districts?

15 A Certainly there was discussion went on as to carving
16 Dallas County into single-member districts, and also
17 into one big district with -- running at large. Yes,
18 sir, that was discussed.

19 Q Was there discussion ever of carving Dallas County
20 into three legislative districts or less than --
21 something between individual and countywide, as you
22 recall?

23 A I recall that there was some discussion in the news-
24 paper, and he might have discussed it with me, but I
25 don't recall at the present time. If I had to say

1 "Yes" or "No," I would have to say no. I don't
2 recall it.

3 Q You recall no discussion, then, with Governor Barnes,
4 then, or Lieutenant-Governor Barnes, on the question
5 of dividing Dallas County into districts of three, or
6 six districts?

7 A That was mentioned by some staff members and worked
8 on, and as far as I know, no plan was ever -- I never
9 saw any plan which divided Dallas into three districts.
10 It was just purely talk. There may have been one
11 produced, but I never did see it.

12 Q You never saw such a plan?

13 A No, sir, I do not recall one.

14 Q Did you ever see a plan dividing Dallas County into
15 individual districts?

16 A No, sir. I heard there was one. I am trusting my
17 memory -- it has been some time, and, as you know, I
18 saw, I guess, fifty or sixty maps during the time this
19 was going on, and I honestly tell you this morning
20 that I do not recall seeing any map drawn of that. I
21 heard there was one, but I do not recall seeing it.

22 Q All right. So the only maps you ever saw, as far as
23 Dallas County, as you now recall it, were for
24 districtwide or countywide districts; is that correct?

25 A Yes, sir. At the hearing there was the -- I believe

1 the people who were -- I don't even recall the name
2 of the witness -- whoever was representing the
3 Republican Party at that, they left those -- the --
4 Bexar, Tarrant, Dallas and Harris Counties were left
5 as a blank; in other words, just with the number of
6 Representatives in them, and if I recall, that was
7 the evidence in that. Of course, the record would
8 show what it is.

9 Q Sure.

10 A I am just testifying as best I can remember what it
11 was.

12 Q I understand that. Well, you say you do recall
13 discussions, I take it, with other Board members on
14 the question of dividing Dallas County; is that right?

15 A That is correct.

16 Q Did you take a position one way or the other on
17 whether Dallas County should be divided into ---

18 A Not until the map was presented to us by the staff.
19 At that time, well, that was the way Dallas County was
20 drawn.

21 Q And so you just accepted the proposal of your staff;
22 is that correct?

23 A I made the statement that I would sign a bill either
24 way.

25 Q You would have signed a legislative bill, if this is a

1 bill ---

2 A Well, excuse me.

3 Q What we are talking about ---

4 A In other words, I would have signed a plan either way.

5 I made that statement, but ---

6 Q Is that an accurate statement?

7 A Yes, sir. I had no strong feelings and have no strong
8 feelings one way or the other about it. Really, the
9 deciding factor was the testimony of those who
10 testified before the Commission and the people who
11 wrote me letters and those that I talked to. The
12 overwhelming majority of those were for Dallas County
13 having a -- running at large or a multi-member
14 district, either way you want to call it.

15 Q But you are really saying to us that, as you viewed
16 it, you would have signed a ---

17 A If the evidence had shown it to be the other way around,
18 I would have signed it the other way.

19 Q All right.

20 A In other words, I was -- let me explain that. I
21 began that practice back -- and this is what upset
22 me when I kept reading in the papers how I was voting,
23 because I began the practice when I was a member of
24 the Senate, on important matters I always tried to
25 withhold my judgment on the matter until I received

1 all of the evidence, and so I did not go into it with
2 a preconceived idea.

3 Q Well, I appreciate that.

4 A Yes, sir.

5 Q But somebody went off to draw a map and came back
6 with a map that has now been signed into law?

7 A That's correct.

8 Q And you signed it?

9 A That is correct, sir.

10 Q And that map ended up leaving Dallas County running
11 countywide?

12 A Yes, sir.

13 Q Now, you told us that if that map had come back to
14 you showing Dallas County cut up into districts, you
15 would have been amenable to that, too; is that
16 correct?

17 A Well, let me say this: If they had -- let me qualify
18 that. If that would have entailed another factor,
19 and that factor would have been were the single-
20 member districts in harmony with the Supreme Court
21 of Texas decision and the Supreme Court of the United
22 States decision under the Fourteenth Amendment.

23 Q Are you talking in terms of population deviation, you
24 mean?

25 A Well, not only population, but the discrimination

1 between minority groups, and I can't -- when you ask
 2 me the question whether I accepted the one with that,
 3 I am assuming that it would have been laid out to
 4 where there would have been no discrimination
 5 between -- in other words, discrimination to a minority
 6 group, and I am not talking about just racial; I am
 7 talking about a political minority as a -- in other
 8 words, it would have had to clear the hurdle in my
 9 mind, was it fair.

10 Q Well, I am kind of puzzled about this map that was
 11 presented to you, which you have signed, and which has
 12 now become law. Who prepared it? Who actually
 13 prepared it?

14 A It was actually prepared by the staff of Lieutenant-
 15 Governor Ben Barnes, and two of my members worked,
 16 plus the Legislative Council and ---

17 Q Can you tell us the people on your staff that ---

18 A It was Mr. Jones and Mr. Hamilton.

19 Q Mr. -- I am sorry; what was the second name?

20 A Hamilton.

21 Q Hamilton?

22 A VOICE: Camm Lary was the other one.

23 A I am sorry; I am sorry. I wonder if we could just
 24 take that out?

25 Q (By Mr. Richards) Sure.

1 A I get balled up on it. He was on the other matter.
2 Hamilton was not on this. It was Camm Lary and Louis
3 Jones. That is Albert Jones' son.

4 Q But Camm Lary, is Lary the last name, you mean?

5 A Yes, Camm Lary.

6 Q L-a-r-y?

7 A Yes, sir. He is no longer with my office. He left
8 here, oh, two or three weeks ago. I think he is
9 practicing in Burnet.

10 Q And I guess the people from Mr. Barnes' staff were
11 Mr. Spellings and -- who else, if you know? Was
12 Mr. Spellings one of them?

13 A Mr. Spellings was one of them.

14 Q And Mr. Hooser; would that have been the other?

15 A Mr. Hooser was the other gentleman; and with the
16 Legislative Council was Mr. Johnson, Mr. Potter and
17 one or two others. I don't recall. I am sorry.
18 When you are working with people like that, I just
19 can't call them, just like I made that mistake awhile
20 ago; I just can't remember.

21 Q That is perfectly all right. Well, did you give any
22 instructions to your members, to your staff members
23 working on the drawing of the plan with respect to how
24 you wanted them to draw Dallas County?

25 A No, sir, I don't recall giving any instructions except

1 the instruction that was given to them to begin with,
2 and that was to follow the law as we thought it was,
3 and we felt like it was, and the percent of deviation
4 to zero, if possible. Of course, that is what we
5 were shooting for, but, of course, it could not be
6 worked out -- at least, we never did see a zero
7 percentage basis.

8 Q But in terms of the policy decision, whether to
9 divide Dallas County or not to divide Dallas County,
10 you issued no instructions to the staff that was
11 working under your directions; is that correct?

12 A That's right.

13 Q Do you have any idea if anyone else on the Board did?

14 A I didn't mean to imply that it was not discussed.
15 Let's back up on that.

16 Q All right. Tell us about that.

17 A It was discussed in their presence, but as far as me
18 giving orders, I certainly did not. That was the
19 question you asked me. As far as someone else doing
20 it, I couldn't answer that.

21 Q My question was, did you give any instructions to
22 your staff?

23 A No, sir, I did not give instructions. It was
24 discussed on numerous occasions, but as far as me
25 instructing them one way or the other, I did not

1 instruct them.

2 Q Did you ever give them any advice or direction that
3 they should draw up a plan that maintained Dallas
4 County as a countywide legislative district?

5 A I can't recall exactly about that. Let's -- I mean,
6 go at it -- and I am trying to give it just exactly
7 the way it came about.

8 Q Of course.

9 A We didn't start with Dallas County.

10 Q Quite obviously.

11 A We started with the, if I remember correctly, watching
12 their progress, they started from East Texas and
13 worked west, if I remember correctly, and there was
14 one district in East Texas that was a thorn, and they
15 worked and worked for a long time, and I was in on the
16 discussions trying to work out Bowie County to where
17 it would not cut the county line, and we finally
18 determined that -- the staff determined, and I agreed
19 with them, because there was no other alternative;
20 it had to be cut, and that was the way they proceeded.
21 The map was being drawn, and I would visit the office,
22 and they would bring partially completed maps over
23 here to us, and the best I can tell you, that was the
24 way it was done.

25 Q But, of course, there had already been litigation and

contentions being made in the Press by various groups about this issue of whether to carve Dallas County or run it countywide?

A Yes, sir.

Q You obviously knew at that time that this was an area of contention?

A Yes, sir.

Q And I am sure your staff members realized that, too, didn't they?

A Yes, sir.

Q And, of course, Dallas County has been allocated eighteen seats, I believe, in the County, and it doesn't affect the other districts across the State, does it?

A No, sir.

Q All right.

A Maybe I can shorthand this a little bit.

Q I am just trying to find out how someone on your staff came up with a plan that said, "Here, let's run Dallas County countywide." Somebody had to make that decision.

A That was a decision, as far as I was concerned, that was a political decision, and not a mathematical decision at all. That is the reason I wanted you to know that. It was a matter that the Dallas people, the

1 ones that I attached confidence in, and the numbers,
2 they wanted their Representatives to run at large,
3 and Mrs. Milburn had expressed her intention that --
4 she was Legislative Chairman, and presented that
5 testimony to us -- that she desired to run at large,
6 and later on I think they repudiated that, but at
7 one time that was their expressed wish, and that
8 is the kind of decision it was.

9 Q Okay. So the decision was a political decision on
10 whether to run Dallas County countywide or cut it
11 into districts; is that correct?

12 A I don't mean -- by "political," I don't recall -- I
13 am not trying to imply that it had to do with getting
14 votes or not getting votes. It was a matter of
15 discretion of the Board and would be based on the
16 wishes of the people.

17 Q Based on the wishes of what people?

18 A Of Dallas County.

19 Q You mean the citizens of Dallas County?

20 A Yes, sir. I mean the citizens. I don't mean the
21 children. I am talking about those who are old
22 enough to vote and those who do express their desires.
23 Of course, whether or not they are registered or not,
24 that was never taken into consideration. In other
25 words, it was just the -- the testimony came in front

1 of us, the people who sent me letters and things of
2 that sort. It -- in my opinion, the preponderance
3 of the evidence was for multi-member, running at
4 large districts.

5 Q Did you then in turn transmit those instructions or
6 advice to your staff people, that you felt that Dallas
7 County should be left intact and run countywide?

8 A Well, that was the final outcome of it. I do not
9 recall that there was any instruction given to them
10 prior to the presentation of the ---

11 Q Plan?

12 A --- plan.

13 Q Well, did you know before you saw the plan presented
14 there on the last day of hearing that it left Dallas
15 County countywide?

16 A Yes, sir, I had heard that.

17 Q But you actually made your decision to sign the plan
18 on the morning of its presentation; is that correct?

19 A No, sir, I wouldn't say that, because it was presented
20 to us prior to that, and because it had to be run
21 on a computer -- in other words, the plan was run on
22 the computer, and there was some changes made in the
23 other areas, but insofar as Dallas County is
24 concerned, it was -- that's what you are asking me
25 about?

1 Q Yes.

2 A The figure 18 was there, and it was at large at the
3 time that I first saw the map, and I believe that Mr.
4 Spellings and Mr. Hooser brought it to my office, and
5 I looked at it, and that was -- I can't recall. It
6 was either twenty-four or forty-eight hours prior to
7 our meeting, and our meeting had to be put off for
8 twenty-four hours on account of the computer had found
9 that ---

10 Q You had 151 seats?

11 A That is correct, yes, sir. I might as well get that
12 in the record, because that happened. There is no
13 use getting around it. I mean, there was 151 seats,
14 and that had to be corrected, and instead of meeting
15 on Thursday, we met on Friday.

16 Q All right.

17 A But what you are talking about was when I originally
18 saw it, and I think that that was on a Tuesday, if I
19 am not mistaken.

20 Q And that plan, as you say, was presented by Mr. Hooser
21 and Mr. Spellings, of the Barnes staff; is that
22 correct?

23 A If I remember correctly, they came in this room here
24 with the plan, and my two gentlemen were with them, and
25 I believe some of my staff people -- I mean, the

1 seventh floor, what we call the administrative people,
2 were here, too, at that time, and I can't recall
3 exactly who it was, but I think it was Mr. Walker, or
4 somebody else was in the room here at the time.

5 Q Alfred Walker?

6 A Alfred Walker, yes, sir, I believe it was.

7 Q All right. But it was on that occasion that you for
8 the first time knew that the plan left Dallas County
9 running countywide?

10 A That was the first time that I had seen the plan
11 completely drawn with Dallas County running 18 at
12 large.

13 Q And you actually didn't know until that time that
14 that was the way the final plan was going to be
15 presented; is that correct?

16 A Well, it was talked, and my people were reporting
17 back to me, and I visited over there at the Legisla-
18 tive Council, and I never did see any map drawn with
19 Dallas County in single-member districts, if that
20 is what you want to ask me.

21 Q Well, I just really want you to try to tell me,
22 without thrashing around -- my thrashing around ---

23 A Yes.

24 Q --- did you ever make a policy decision or a political
25 decision, however you characterize it, as to whether

1 Dallas County should or should not be divided, and,
2 if so, when did you make that decision?

3 A My decision was made at the time it was -- the actual
4 final decision was not made until I affixed my
5 signature to it.

6 Q All right.

7 A That was the final decision.

8 Q Obviously.

9 A But I would not mislead you in saying that I was not
10 agreeable to the plan prior to that, because it was,
11 as I told you awhile ago, not being repetitious, but
12 I believe it was presented to me on a Tuesday prior
13 to its adoption on Friday. The plan was presented
14 to me, was shown to me, and that was the way it was,
15 and I consented to it at that time.

16 Q At that time?

17 A Yes, sir.

18 Q All right. In advance of that preliminary presenta-
19 tion, had you given any instructions, advice or
20 directions to your members who were functioning along
21 with Mr. Barnes' staff as to your preferences on the
22 division of Dallas County?

23 A No, sir, I don't recall giving any instructions at
24 all.

25 Q Or advice as to your preference?

1 A No, sir. I didn't -- actually, the drawing of the
2 plans is -- the only advice that I could give them
3 is to come back and give you what I did awhile ago,
4 is the Supreme Court decisions and the census tracts
5 and things of that sort. That was the type of guide-
6 lines given to the staff.

7 Q And if Mr. Jones sitting down here had come back on
8 that Tuesday and had presented you with a plan to
9 have Dallas County carved into individual number
10 districts or, for that matter, I guess into three
11 separate districts, you would have been prepared to
12 sign it, as long as you were satisfied that it did
13 not intentionally discriminate; is that correct?

14 A Yes, sir.

15 MR. LUNA: Just for the record, ---

16 MR. RICHARDS: Well, excuse me. Let me get
17 an answer to this, and you can get on the record as
18 you want to.

19 A I have lost ---

20 MR. LUNA: Well, my objection is to the
21 question; and the objection is that the question is
22 speculative and hypothetical, asking the General what
23 he might have done had something happened that didn't,
24 in fact, happen, and we object to it as being too
25 speculative and dealing in conjecture, and not a proper

1 question.

2 MR. IDAR: I would like to, for the record,
3 clarify Mr. Luna's position here. Is he here
4 representing the State?

5 MR. LUNA: No, sir.

6 MR. IDAR: I understand you are represent-
7 ing some of the plaintiffs in Dallas County.

8 MR. LUNA: You have been grossly misin-
9 formed. I represent the Chairman, Roy Orr, the
10 Chairman of the State Democratic Executive Committee.

11 MR. IDAR: I see. You are representing
12 a defendant?

13 MR. LUNA: Right.

14 A I am sorry. You will have to rephrase the question.

15 Q (By Mr. Richards) I suppose we will never find it
16 again. The -- so you are not able to tell us, are
17 you, General Martin, when, and even by whom, the
18 decision was initially made to leave Dallas County to
19 run at large?

20 A Well, certainly the decision was made by the three
21 that signed the plan.

22 Q The plan?

23 A And I can't recall; it seems like to me it was on
24 the -- well, I don't remember the vote now, but,
25 anyhow, it was at least three, and this is what the

1 Constitution specified, and as far as the voting
2 was concerned, there was no votes taken except -- I
3 take it back -- the only vote that was taken was
4 taken, and I forgot that particular meeting. I will
5 have to retract that -- go back and state that we did
6 meet in this room one time for the purpose of
7 instituting the -- I mean, taking a defense stand
8 in the Supreme Court as to what the Board wanted to
9 do, and we did -- at that time we took a vote. Now,---

10 Q But that was ---

11 A It was approval of the minutes and so on, but as far
12 as taking a vote on the question that you are trying
13 to pursue, there was no vote in holding up the hand
14 and saying "Aye" or anything like that, but there
15 was certainly consultation and a meeting of the minds.
16 There had to be a meeting of the minds before the
17 staff would have gone ahead and presented such a
18 plan.

19 Q So you are not able to tell us exactly whose original
20 decision it was to leave Dallas County intact; at
21 least, it is your position that you approved it when
22 it was presented to you?

23 A Yes, sir, that's what I am telling you.

24 Q That's what you are telling me?

25 A That was my ---

1 Q And I believe you have told me that you had no fixed
2 views about the question of whether it should be
3 left countywide or divided into districts, that you
4 would have been receptive to either; is that correct?

5 A Up until the -- up until the decision was made, that's
6 right.

7 Q You had an open mind until the decision was made as
8 to leaving Dallas -- on that question; is that
9 correct?

10 A That's right. If you read the newspaper the other
11 way around, why, ---

12 Q No, I didn't read the newspaper.

13 A --- that is in error. The newspaper accounts that I
14 saw, they said I was the swing vote on it. Of course,
15 that didn't prove to be accurate. They were speculat-
16 ing.

17 Q And, as I understand, the decision was made, as you
18 described it to us, the day before it was officially
19 announced, and that's when you all met in here and
20 the staff presented the plan; is that correct?

21 A When you say "they," let's specify. Myself, Mr.
22 Hooser, Mr. Spellings, and I believe Mr. Walker, and
23 maybe one or two others. They said that, "This is
24 what we have drawn, and this is agreeable with two
25 other members of the Commission, and would you be

1 willing to sign this?" I said, "Certainly, I will be
2 willing to sign it."

3 Q All right.

4 A After my two gentlemen who represented me have done
5 all of the checking and it passes the computer test,
6 which it did not do, but it was after that -- in
7 other words, -- but as far as the question you are
8 talking about, the basic Dallas County question, the
9 passing the computer test had no relation to it, but
10 I wanted you to understand that was the subject that
11 my decision was -- that was what it was subject to.

12 Q And that plan as you have described it was presented
13 to you essentially by Mr. Spellings; is that correct,
14 with other people participating?

15 A Well, let's put it this way, so you will understand
16 exactly how it was done. I am doing the best I can
17 to try to explain exactly.

18 Q Surely.

19 A I was busy in here, and I came into the room, and
20 the map was on the table here, and so far as present-
21 ing it, I don't know if anybody pointed out anything.
22 They asked me to look over it, and I spent, I would
23 say, probably thirty or forty minutes going over the
24 details of the map, and after I determined it -- let
25 me put it this way: If I had drawn the map myself, it

1 would not have been exactly as it was laid in front
2 of me, but on the other hand, no other member would
3 have been -- I mean, that's what you get when you get
4 more than one person. One person can draw a map to
5 suit himself, I hope, but when you get two or three,
6 and the Constitution calls for three, the variations
7 that I didn't particularly care for personally were of
8 such a minor nature that I didn't -- in other words,
9 I thought it was best for the State that I go ahead
10 and sign the plan as it was.

11 Q And I take it one of the variations that you did not
12 quarrel with, or one of the aspects you did not
13 quarrel with was Dallas County?

14 A That is correct, sir.

15 Q And you told us, I think, that your acceptance of the
16 Dallas County at large plan was based upon what you
17 considered to be the wishes of the people of Dallas
18 County; is that correct?

19 A That is correct, sir.

20 Q And that was based in turn upon the communications
21 you had received from Dallas County, is that correct,
22 and the testimony before the Board?

23 A The testimony before the Board and the communications
24 received and the fourteen years' experience I had had
25 in the Legislature dealing with Dallas County. In

1 other words, Dallas County is next to Hill County,
2 and I wouldn't want to tell you that I started out
3 with just no knowledge at all of Dallas County,
4 because it has always been one of my -- in other
5 words, it is the closest county to us, and that's
6 where we go to shop, and I guess I know more about
7 Dallas County than I do any other county in the State.

8 Q Well, now, actually, you have to go through Ellis
9 County, don't you, to get to Dallas County?

10 A That's right. I was thinking about my District.
11 I represented Ellis County so many years, I felt like
12 it was -- in other words, it is the county we go to,
13 and I am familiar with Dallas County pretty well.

14 Q Actually, inasmuch as I grew up in McLennan County,
15 I suppose there are some Hill County people who still
16 go to Waco to shop, even though Dallas is much more
17 attractive.

18 A Well, that is one of those things that the dividing
19 line is Hillsboro, and some of them do go there, but --
20 those who live in Hillsboro go both ways, but those
21 who live north of Hillsboro all go to Dallas, ---

22 Q All right, sir.

23 A --- and some few go to Fort Worth.

24 Q Was there any discussion during the Board sessions
25 about the question of whether to divide Tarrant County

1 or Bexar County into something less than countrywide
2 districts?

3 A No, sir, I -- in other words, that was -- the evidence
4 that we received from Tarrant County was that -- well,
5 it was almost unanimous. Now, there may have been --
6 I haven't looked through all of these papers here --
7 there may have been one or two letters that came in
8 here from somebody, or a few people who wanted it
9 divided into other districts, but there was no --
10 well, there was just very, very little evidence at
11 all that I can recall from Tarrant County. The fact
12 of the business, it seemed to be pretty unanimous
13 that that's what they wanted.

14 Q What about Bexar County?

15 A We had the same situation, without repeating all of
16 that. It was about the same situation, except that
17 on the last day of our hearings that we had in the
18 Senate, that particular hearing -- I am talking about
19 that hearing we had in the Senate Chamber or in the
20 Senate Committee Room, I believe Mr. Alanis arrived
21 late, and the meeting was just about ready to be
22 adjourned, and he arrived and said that he would
23 testify that he would like to see it into single-
24 member districts. We may have received some letters
25 or telegrams from there, but I don't -- I can't recall

1 it.

2 Q If I were to sum up what you have told us, then,
3 about your role and the decision to run Dallas County
4 at large, I assume it is, again -- you felt it to be
5 established in the record that this was the wishes
6 of the people of Dallas County; is that correct?

7 A Plus the fact that I felt it was fair to all groups.
8 That was the test that I -- in other words, I put the
9 same test to run at large that I would -- as I gave
10 it to you awhile ago, to run in single-member
11 districts. In other words, was it fair to the
12 racial minorities and was it fair to the political
13 minorities, and I don't know whether you could say
14 that the political minority of Dallas County is -- I
15 don't know exactly what that is, but, in other words,
16 if there is such as that, there is a thing, because
17 Dallas County is a switch county, as you know.

18 Q What sort of soundings did you take to determine
19 whether or not it was fair to the racial minorities
20 of Dallas County?

21 A Well, all I had to do was -- we did look at the elec-
22 tion returns in the last ten years, and that's the
23 pattern of the voting up there, and they have elected
24 racial minorities up there under at large, and I
25 believe the Republicans swept the County except for one

1 Representative, oh, I don't remember, four to six
2 years ago, about six years ago, if I am not mistaken.

3 Q All right. You looked at the election returns for
4 the last ten years?

5 A Well, yes, sir.

6 Q Did you go back any further than ten years?

7 A Well, as far as actually looking at the records, I
8 did not. I have been acquainted with Dallas County.
9 Like I say, I ran in that area, and, of course,
10 State politics has been my business for twenty-four
11 years, and certainly I would have some knowledge of
12 how Dallas County votes.

13 Q Based, then, I take it, upon your service in the
14 Senate, your proximity to Dallas County as a resident
15 of Hill County and the election returns of past years,
16 these persuaded you that ---

17 A And the -- not to interrupt you -- and the evidence
18 that was presented to the Board. That was -- you are
19 leaving out one of the main things.

20 Q All right. And the evidence presented to the Board
21 persuaded you that a countywide plan in Dallas County
22 was fair to racial minorities; is that correct --
23 basically to the Negro population?

24 A We would say to all minorities, is the way I would put
25 it.

1 Q Well, but with specific reference to the Negro
2 minority in Dallas County, you were persuaded on the
3 basis of what we have just recited that it was fair
4 to that minority; is that correct?

5 A That is my opinion. They have elected Blacks from
6 Dallas County several times, and those who have come
7 down here have been high-class gentlemen.

8 Q Yes, they have.

9 A They are real fine people.

10 Q Well, were you aware, I take it, inasmuch as the
11 evidence was before the Commission that the elected
12 Black officials of Dallas County felt that countywide
13 districting was not fair to them, not fair to the
14 Black minority?

15 A Well, I couldn't -- in other words, you are stating
16 a "beat your wife" type of question. I can't -- I
17 mean, I can't answer that question exactly.

18 MR. STEELE: If I might interject, why don't
19 we just ask the question directly, or maybe you are
20 coming to it, and maybe not. Mr. Martin, I wonder if---

21 A I don't mind taking them one at a time, but I don't
22 like to take them in teams. I am a lawyer, myself,
23 and I believe that is a little bit unfair, to take
24 them in teams.

25 MR. RICHARDS: We will be talking with

1 General Martin all morning long, I suppose, and I
2 am sure I am going to foul up some questions, and I
3 hope you will pick them up.

4 Q All right. Were you aware that the one elected
5 legislator from Dallas County, Reverend Zan Holmes,
6 as well as the other two elected Black officials in
7 Dallas County, George Allen and Dr. Conrad, were
8 opposed to countywide districting?

9 A I got a telegram from Mr. Zan Holmes, I recall. I
10 don't recall getting a telegram from the other two.
11 I do recall getting a telegram from Mr. Zan Holmes,
12 and he said that he was opposed to it, yes, sir.

13 Q And you had testimony, did you not, from at least one
14 Black citizen of Dallas County before the Board that
15 they felt that the countywide districting scheme
16 resulted in discrimination against Black minorities?

17 A Yes, sir. Of course, the record would speak for
18 itself.

19 Q Yes, but you recall ---

20 A But if I recall right now, there was such a man. I
21 do not recall his name.

22 Q What was it that caused you to reject this view of
23 the Black citizens of Dallas County and opt for a
24 view that they were being fairly treated?

25 A I don't -- there was an assumption you were making

1 awhile ago. I don't assume that is necessarily
2 true. The voting pattern is one thing, but whether it
3 is -- whether or not the plan is fair is another
4 thing, and they are entirely different questions
5 insofar as it being fair. I took them back to the
6 same conclusion, that I felt that it was fair to the
7 racial minorities to run at large. ~~THEY~~ ~~SAID~~

8 Q Now, you said you were contacted by various persons
9 from Dallas County indicating their wishes that Dallas
10 County continue to be run at large. Can you tell us
11 who contacted you in addition to that that appears in
12 the record you have furnished, in addition to those?

13 A I just couldn't give you the names of all of them at
14 all. Some of them, there are letters in the file,
15 and, to be honest with you, I couldn't give you their
16 names right at the present time. It is in the file,
17 but ---

18 Q Do you keep ---

19 A I don't know who all wrote me, but, then, I received
20 telephone calls from quite a few of the Representatives
21 up there, and some of the businessmen and others up
22 there concerning that, and, of course, we had the
23 testimony in front of the Commission. I believe Mr.
24 Luna testified. ~~OTHER~~ ~~WAS~~ ~~AS~~ ~~THE~~ ~~WAS~~ ~~WAS~~

25 Q Then you say telephone calls from Representatives and

1 businessmen. Can you tell me the names of the
2 Representatives or businessmen, or any of them that
3 contacted you by phone?

4 A I confined myself to phone there. I am sorry that I
5 did that. It is -- my memory is just not that good.
6 Let me say this: I received, either personally --
7 in other words, either stopped me and talked to me
8 or sent me word, or called me, and I really don't
9 recall right offhand who it was that called me on
10 the thing. All I could say is that the -- some of
11 the members of the -- Representatives up there,
12 Members of the House, contacted me, but I want you
13 to understand that I did not -- this was just one
14 small factor in the matter -- I mean, the wishes of
15 the legislators from that County were taken into
16 consideration, but I wouldn't take that as paramount
17 at all.

18 Q They were actually a small factor, the wishes ---

19 A Yes, sir, as far as I am concerned, the Representa-
20 tives -- let me, so that it will correct the record,
21 if you will let me explain.

22 Q Sure. I want you to.

23 A This, really -- the Representatives up there really
24 would be probably better-qualified to do the re-
25 apportionment than I was, but the Constitution placed

1 the burden on me, and -- but after it was placed on
2 me, then I felt that I should listen to the
3 Representatives, but I would not attach paramount
4 importance as to what their desires were, because
5 each one of them that I recall that spoke to me had
6 a direct interest in how the bill would be drawn to
7 help their political chances, and that was -- I would
8 have to balance that in my mind, as versus -- for
9 instance, I was in the Senate for a long time, and I
10 found out a long time ago that a form letter or some-
11 one who had an axe to grind, it didn't have as much
12 impact on me as hearing from people who did not.

13 Q All right, sir. So, then, there was really -- it was
14 the opinions of others that weighed more heavily on
15 you in this decision other than legislators; is that
16 correct?

17 A Yes, sir.

18 Q And can you give us -- I know Mr. Lums's opinion was
19 presented to you, at least in testimony. Did Mr.
20 Lums call or write to you further on the matter?

21 A Mr. Lums called me on one occasion concerning the
22 time of his testimony. In other words, he was
23 requesting to be heard, and if I had any other
24 conversations with Mr. Lums other than that, I don't
25 recall it, except I did have personal greetings. We

1 greeted each other in front of the Hearing Room the
2 day that he testified, and I don't recall having any
3 other conversation with Mr. Luna.

4 Q All right. Then, I take it there were communications,
5 then, in addition to those from Mr. Luna and from
6 legislators, that weighed more heavily in your mind
7 with respect to the wishes of Dallas County, and I
8 am curious if you can give us ---

9 A Well, the newspapers had some effect. I wouldn't
10 just -- persons and newspapers, the editorial staffs,
11 the newspapers, they usually have some bearing on
12 the matter.

13 Q Anything other than that, now?

14 A Well, I could sit here and talk about the things a
15 long time.

16 Q Sure.

17 A But it was just -- it was the -- trying to go back
18 and trying to reconstruct the workings of my mind is
19 almost impossible. I don't want to be -- I am not
20 trying to be evasive. I am doing the best I can
21 to answer you, but I just can't tell you all of those
22 things, because they were -- I was getting something
23 like -- stacking up calls something like twenty-five
24 or thirty a day that I could not take, and I would
25 receive word from somebody that they were trying to

1 call me, and that they wanted to give me this
2 information, but it was a real harried thing, but in
3 order to give you the inner workings of my mind at
4 that time, I cannot do it.

5 Q All right. Do you keep a log, a telephone log, that
6 will reflect the phone calls, for example, that you
7 receive on a day-to-day basis?

8 A No, sir, I do not.

9 Q Or does your secretary?

10 A No, sir.

11 Q You indicated that you received calls from Dallas
12 businessmen on the subject. Can you tell us any
13 single businessmen from Dallas that you now recall
14 that called you?

15 A Yes, sir, I can name a few of them. They may not --
16 I mean ---

17 Q Sure.

18 A It may not be exclusive, but I received a call from
19 Mr. George Cowden, who I have confidence in. He is
20 a businessman there in Dallas.

21 Q He used to be from Waco?

22 A He was from Waco, and he worked in this office, and
23 I talked to George a good long while about it. He
24 is a citizen up there.

25 Q Uh-huh.

1 A And I -- now, you excluded legislators, didn't you?

2 Q Yes.

3 A Because I was fixing to tell you about Jimbo Atwell.

4 Q I am sure you have heard from Jimbo.

5 A I am sorry, Harry, I called you up there.

6 Q We don't want to tell Jimbo stories. We will be here
7 all week.

8 A There are some of the people, like I say, in the life
9 insurance business, some in the dry goods business.

10 Mr. Joe -- Mr. Chandler, who used to be with Sanger
11 Brothers; I recall him visiting with me about the
12 matter. Mr. -- well, let's see. There was lawyers --
13 I didn't mention them awhile ago. I had several
14 lawyers to call me, and I ---

15 Q Do you remember any of them?

16 A The former -- one of the former Chairmen up there,
17 and I can't think of his name right now.

18 Q Ed Gregg?

19 A Yes, sir, I believe it was. And, let's see ---

20 Q Joe Rich?

21 A Joe Rich. Yes, you are right. I am sorry. I can't
22 remember these names. You can.

23 Q That's all right.

24 A I am just not good at remembering names, but they were--
25 I would say probably half the calls of people who

1 contacted me outside of legislators were attorneys,
2 and certainly most of them were knowledgeable people
3 in the workings of the politics in Dallas County.

4 Q Do any other names come to mind immediately?

5 A Not at the present time. I am sorry. My mind is
6 blank on that.

7 Q By the way, do you keep a log here of visitors?

8 A Yes, sir, we have one out in front.

9 Q So, in looking back at that log, would there be
10 anybody that came to see you in person that you ---

11 A Let me say this: Sometimes they sign that, and
12 sometimes they don't. My girl has instructions to
13 ask them to sign it, because the law requires it,
14 but I would say that over half of those that come
15 do not sign it, and there is not much that I -- I
16 mean, I don't know whether they sign it or not sign
17 it, but if you want to look at that log, you are
18 certainly welcome to look at it. We have to file a
19 copy of that log with the Secretary of State, and you
20 will find it -- I don't think it has been filed yet,
21 because I think we file it once a year, but you are
22 certainly welcome to the log. What I am saying,
23 again, I am saying -- I am not saying that that is
24 exclusive, because there is a world of personal visitors
25 that just don't feel like -- they come to see me on

1 matters of the Attorney General, and they just don't
2 sign it at all. They come right on in.

3 Q Now, let me see, General Martin, if I can summarize
4 a couple of things that we have done. The decision
5 with respect to Harris County, I believe you have told
6 us, was essentially twofold. You felt it would be
7 the wishes of the people of Harris County, and there
8 was historical precedent in the light of the way it
9 was previously divided; is that correct?

10 A Yes, sir, that is two of the main factors.

11 Q Well, and you gave us one third minor factor. You
12 said it was easy to divide?

13 A Yes, sir.

14 Q Were there any other factors other than that?

15 A No, right offhand I can't recall any other factors.

16 Q All right.

17 A There may have been. I just do not recall. The
18 Harris County situation is entirely different from
19 the Dallas County situation.

20 Q All right, sir. And if you think of any other factors
21 during the course of the deposition, I hope you will
22 let us know, if they come to you.

23 A All right, sir.

24 Q And on Dallas County, I believe you told us it was
25 essentially a decision based upon what you deemed to

be the wishes of the people of Dallas County; is that correct?

A Yes, sir.

Q Any other factors other than that?

A Well, we would have to go back over all of the testimony we have had.

Q Yes.

A And to summarize that as the wishes of the people of Dallas County ---

Q Very well. As defined in your ---

A In other words, I mean, the only thing I can tell you is I don't see that you can summarize it in one sentence.

Q All right.

A It was all of the factors that I talked to you about.

Q In your testimony that you have already given?

A Yes, sir.

Q All right, sir.

A That's what I'm talking about.

Q Well, are you telling us that there was some physical reason why Dallas County couldn't be divided? I mean, there was no physical reason, was there?

A Well, I can't answer that at all. I am sorry. I cannot answer that.

Q You are not aware of any?

A I am not aware of it. I mean, I am not aware one way

1 or the other about the matter. I did not undertake
2 to divide it into single-member districts, and, as
3 I say, I just couldn't answer that question.

4 Q Insofar as you know, it could have been done
5 physically?

6 A I just can't answer that.

7 Q All right, sir.

8 A Let me explain that, if you don't mind.

9 Q Sure.

10 A The census tracts, when they laid them out in
11 Washington, they had no reference to legislative
12 districts, and they run from zero -- some census
13 tracts have no people at all, up to as high as 15,000
14 people, and this is a difficult situation, a lot
15 more difficult situation than at first blush. Most
16 people think that all you have got to do is just take
17 -- start in and just move these just like taking a
18 ruler and pushing it over here, and put this many over
19 here and put this many over here. It just doesn't work
20 that way, because you are working with census tracts,
21 and they are odd-shaped; they are not square; they
22 are not round; they are odd-shaped, and this is a
23 difficult situation. Like I say, it is more a
24 mathematician-type operation and analytical-type
25 operation than it is anything else.

Q I am sure either you or your staff took into account
judicial decisions in making this decision?

A That was the main thing that -- the main part that I
had in the -- outside of being Chairman -- was to do
my best to try to abide by the Courts' rulings. As
you know, we were under a mandate from the Supreme
Court of Texas, ---

Q Sure.

A --- and so we tried to abide by that mandate. No one
filed an action in the Supreme Court saying we had
disobeyed their mandate.

Q I take it you took into account, too, the Court's
decision in the Kilgarlin case that was the earlier
case?

A Yes, sir. I happened to be a party to that case.

Q You were a party to that case?

A Yes, sir.

Q You were actually a party defendant to that case?

A Yes, sir. It is Kilgarlin versus Martin, and it was
tried, I believe, in 1965.

Q Now, the newspapers widely reported that you received
considerable pressure from conservative business
leaders in Dallas County to retain the countywide
system. Can you ---

A The only thing I can say is, I don't know where they

1 got that information. I received a cross-section
2 of the business personnel and legal personnel, and
3 I thought a fair representation in the cross-section
4 of just ordinary citizens.

5 Q Well, have you told us the names of all of the per-
6 sons, now, that you recall who reflect that cross-
7 section?

8 A Oh, no. I didn't -- as I told you, all I could bring
9 to my mind at the present time without anything to
10 refresh it, and I am sitting here -- so the record
11 will show it, I am sitting here with nothing to
12 refresh my memory with at all.

13 Q Yes. I am sure the record ---

14 A I can't remember at the present time. I know -- I
15 remember another one, since you mentioned it. It
16 was this -- I can't remember whether he was a
17 Representative or the State Chairman at the present
18 time. Mr. Orr called me down there, and I received
19 several calls from Garland and from Grand Prairie,
20 and I know we got several calls from Irving and
21 Richardson that was -- if I remember it correctly,
22 I received some calls one way and some of them the
23 other way. When it first started out, they wanted
24 them at large, and then at the end, they were -- some
25 of them were convinced that they wanted the single

districts.

Q Did you make any effort to record these calls or make notes of them?

A No, sir, I certainly did not. I am sorry that I didn't at the present time, but I didn't anticipate the litigation, even though -- I mean, the detail that we have at the present time. Otherwise, I could, but I don't make a practice of that.

Q And so when you indicated a moment ago that you were not testifying from any notes, which is accurate, ---

A That's right.

Q --- I take it there are no notes that you have available to you to refresh you on this?

A The only thing I could do would be to go back to these letters and go through there, and I am sure some of them said, "I wrote you, I called you yesterday," and so forth and so on, but when you are getting four or five hundred letters a day in this office, like comes through, it is difficult for me to remember everybody.

Q Okay, sir. I assume that you were aware of the view that carving of Dallas County into smaller districts would tend to increase the number of Black Representatives from Dallas; you have heard this view expressed, have you not?

1 A Yes, sir, but I am not certain --I mean, in my
2 opinion, the Blacks will receive a proportionate
3 amount of representation at the next election, with
4 this one proviso: The Blacks tend to vote Liberal
5 Democrat, and this is their ideology, and naturally
6 they will not -- probably will not fare as well as
7 they would if they voted as a swing vote. They may
8 vote as a swing vote, and what we are talking about
9 now is highly speculative as to what they may do in
10 the future, but you asked me what my feeling was, and
11 it is that they were treated fairly and will receive
12 their proportionate share of representation, the same
13 as Harris County will.

14 Q But did you -- all right. I understand, I think,
15 your answer.

16 A Yes, sir.

17 Q But putting it slightly different, do you quarrel with
18 what was the assumption at the time, that single-member
19 districts would produce more Black legislators from
20 Dallas County?

21 A I just couldn't answer that, as to whether it will or
22 will not. That is speculative, but I will say this:
23 I would not have signed it if I had not felt that the
24 Blacks would get somewhere close to the percentage that
25 they -- taking into consideration the fact that they

1 have heretofore not been a swing vote, and if they
2 were a swing vote, they would probably receive more
3 than that, but this is something that is the facts
4 of life about the matter, and there is some indication
5 that they will be a swing vote the next time, and
6 that had started earlier in the year, and I would
7 think that that probably may come to fruition.

8 Q In looking at the question of whether, you know, Blacks
9 were being fairly represented in Dallas County by the
10 system that exists, did you consider past history, as
11 well as, I take it, projecting into the future? Did
12 you consider your own experience as a legislator and
13 what you knew to be the case in terms of the existing
14 representation?

15 A I am sorry. I didn't -- you have got me ---

16 Q Well, I am sorry. You said that ---

17 A I am getting a little bit tired, and I didn't catch
18 your question. You will have to rephrase it.

19 Q In reaching the decision that satisfied you that the
20 countywide scheme was fair to the Black minority, did
21 you take into account what you knew of Dallas County
22 from your service in the Senate and your period as
23 Secretary of State and your period as Attorney General
24 in terms of how that past representation had affected
25 the interests of the Black minority?

1 A Well, yes, sir. Of course, there were very few
2 Blacks offered for office back when I was in the
3 State Senate. I don't recall -- I mean, in most
4 years none offered for office, and, of course, you
5 can't compare that with what it is today, but what
6 we are talking about is what the situation is today,
7 and qualified Blacks are offering for office, and in
8 my humble opinion, the voters of Dallas County will
9 vote for the man quicker than any other County in
10 the State. In other words, if you want to get down
11 into the political arena, I would say that over fifty
12 of the voters of Dallas County are swing voters.
13 They vote Democratic, and they will vote Republican,
14 and they will vote for a certain man. In other words,
15 they have proved that in the past. That is just
16 Dallas County people are independent-type voters.

17 Q Are you saying that Dallas is a special case in the
18 State, you mean?

19 A No; I just think that -- the fact of the business is
20 that the majority of, say, close to the -- close to
21 half of the voters in Texas are of that class at the
22 present time. They are independent voters, and the
23 great bulk of the voters in the metropolitan areas
24 will vote for a person that is qualified, regardless
25 of whether he is Black or White, or any other race.

1 That is my opinion at the present time, sir.

2 Q Did you take into account at all the cost that might
3 be required of a person to make a legislative race
4 in Dallas County in the primary?

5 A No, sir, I don't recall us ever, or that ever being
6 talked about or discussed at all. I am certain it
7 would be foolish of me to tell you that I am not
8 well-acquainted with the fact that it costs lots of
9 money to run for office, because I happened to run
10 for office myself, and it does cost lots of money,
11 yes, sir.

12 Q Did you consider the possibility that the White
13 majority of Dallas County might be hostile toward
14 the interests of the Black Community?

15 A No, sir, I don't consider that to be a fact at all.

16 Q You felt that there was no support for that position;
17 is that correct?

18 A No, sir. I don't take that position at all. In
19 other words, as I stated before, I think that the
20 citizens of Dallas County -- for instance, we had one
21 group that came before us, and they were complaining
22 because they never had anybody elected from their
23 area. Well, they never had offered any candidates,
24 but based on what we have seen in the Legislature,
25 there would be qualified Blacks offer, and I don't

1 think that there is enough racial overtone in Dallas
2 County to swing an election one way every time. I
3 wouldn't go with that at all.

4 Q Do you think there is any racial overtone in Dallas
5 County?

6 A There is always a little bit somewhere. That is one
7 of the facts of life we have, but it is a very minor
8 factor, as far as I am concerned, in the election
9 of their Representatives.

10 Q Has that always been the case?

11 A Sir?

12 Q Has that always been the case, as far as you know?

13 A Well, I can't answer that. I would be speculating,
14 because, like I say, back years ago no Blacks offered
15 for office up there. As soon as they started offering,
16 there were some elected. I would say, also, that
17 there was -- well, that's about the best I can answer
18 it. I can't answer it any better than that.

19 Q Well, did you take into account at all the fact that
20 previous Dallas County delegations that served in the
21 Texas Legislature had voted for laws that were hostile
22 toward the Black interests?

23 A Well, I don't recall any vote like that in the last
24 ten years at all, and so I -- so those who came down
25 here from Dallas County, which is an entirely different

1 question you asked me now, as to the views of those
2 who represent Dallas County at the present time, I
3 don't consider any of them racists at all.

4 Q Did you --

5 A I mean, I am just saying that is the way I consider
6 them.

7 Q Well, did you consider that at all? I mean, is this
8 something you examined to try to help satisfy your-
9 self, or did you think this was not material?

10 A Oh, yes, I examined that. As I said, that's one of
11 the things I did. I tried to examine this thing from
12 the protection of the minorities, and that was my
13 conclusion about the matter, and I still feel that
14 way.

15 Q Did your examination carry back as far as 1957?

16 A No, I didn't go back into the -- in other words, I
17 don't consider the 'forties and 'fifties as relevant
18 to the present situation, and there has been a
19 completely different -- as I stated awhile ago, and
20 I am repeating again, there have been different things
21 that have come about. Number one, the Blacks are
22 better educated today than they were then. There were
23 very few college graduates at that time. They were
24 not offering for office, and there was a completely
25 different atmosphere at that particular time than what

1 we have today in Texas, but I hasten to say that, so
2 far as I know, there has been no one deprived of a
3 vote in Texas for, I would say, oh, thirty-five years,
4 since the Grimes County case, on account of his race,
5 that has been brought to my attention. That case --
6 maybe I might -- I thought it was in the 'thirties,
7 but ---

8 Q I think it actually goes into the late 'forties, if
9 you are talking about the last of the Jaybird
10 primary cases.

11 A Yes, sir. In other words, that is the last time that
12 I recall anything, and that was an isolated case, and
13 the counties that I am acquainted with -- and I ran
14 from ten counties up there -- there was -- I know of
15 no instances in which anyone was deprived of their
16 vote on account of their color.

17 Q Of course, you know that they were deprived of the
18 right, of course, to attend White schools on account
19 of their color?

20 A Up until 1954, that was the law and the Constitution
21 of the State of Texas. That was overturned, of course,
22 in the Brown case, and I believe it was in May of '54.

23 Q Then, you are aware, I assume, that still is being
24 litigated in Dallas County today in terms of the
25 equal protection of the Black minority children's right

1 Q to attend schools?

2 A I read the Dallas News and the Times Herald, and
3 there seems to be quite a bit of litigation going on
4 in regard to that. The thrust of it seems to be
5 based on the busing, the best I could give you on
6 that. That seems to be the argument at the present
7 time, of busing school children.

8 Q So the issue is still with us, as you see it?

9 A Yes, sir; and I think that until -- it will be with
10 us -- that particular issue will be with us for a
11 little while longer. I think it will resolve itself.
12 In my opinion, it will be resolved in the next twelve
13 months. I am not saying that the litigants, that
14 anything that is emotional, their feelings just don't
15 come overnight, but, on the other hand, the great
16 bulk of the Dallas County citizens are not vitally
17 interested in that. They are a group of people who
18 feel one way or the other on that particular issue.

19 Q You know Be Byers, don't you, I assume?

20 A I have been knowing Mr. Byers -- are you talking
21 about the reporter for the Houston Chronicle?

22 Q Yes.

23 A I have been knowing him for, oh, I would say fifteen
24 years. He came here, and then he left, and then he
25 came back. He is the Chief of the Bureau of the

1 Houston Chronicle.

2 Q You know him as a long-time political observer and
3 political reporter?

4 A As far as the elections are concerned, he makes a
5 survey prior to elections and, as predictors go, he
6 is probably one of the best predictors of who is
7 going to win an election that I know of in the State.
8 Yes, sir, I would agree with that.

9 Q To quote Bo Byers' column of October 10, 1971, and
10 get your response to it, if I may -- this is a
11 quotation: "Conservative Democrats have dominated
12 elections of State Representatives in those three
13 big city counties." And that is referring to San
14 Antonio, Dallas and Fort Worth. Continuing the quote:
15 "Single-member districts undoubtedly would lead to
16 election of more Liberal Democrats, Republicans,
17 Blacks, and Mexican-Americans in those counties."

18 Would you consider that to be an accurate appraisal
19 of the political reality of those three counties?

20 A Well, I would not consider that as being one hundred
21 per cent accurate. As I stated awhile ago, I think,
22 as far as -- I think if you would take Mr. Byers and
23 you let him survey the Governor's race or the United
24 States Senate race, he comes up with a pretty good
25 answer as to who is going to win, but as to his

expertise on Dallas County, I couldn't testify to that. I don't think he is an expert on the inner workings of Dallas County at all.

Q So you would not accept that as an accurate appraisal?

A I would take his word for Harris County, but as far as Dallas County is concerned, the Houston Chronicle does not go into there, and the only time he ever goes to Dallas County that I know of is once ever two years, to make this survey, unless he goes up there on some other business, but the only time he ever tests the sentiment is during that time, and, as far as I know, he hasn't been there lately.

Q Okay. You say you read the Dallas Times Herald?

A Yes, sir, I -- they don't throw the Dallas Times Herald here, so I don't get it as often as I get the Dallas Morning News. The Dallas Morning News is thrown here, and I read both of the papers when I get a chance. Sometimes I go for several days, and I don't get a chance to read the papers.

Q I have a quote here from the Associate Editor of the Dallas Times Herald, who I think is Mr. Durt Holmes.

A I have met Mr. Holmes. I am not acquainted with him, sir.

Q Of October 3, 1971, commenting on the question of the division of Dallas County: "Hiding somewhere in

the recesses of memory is the history of 1962, when a Republican surge brought victory to every GOP candidate running in Dallas County, including every legislative seat contested. The chance of a similar sweep in future years does not appear to weigh heavily on the minds of Dallas Demo leaders. One told me last week he would prefer the big gamble on total victory rather than the almost certain loss of some seats to Republicans or Liberals under a single-member district plan."

Did anybody ever express that view to you during the course of these matters?

A I am sorry. If you want to introduce that in evidence, you can. I don't ---

Q No. Did anybody ever express that view to you at all at any time during the course of your ---

A I may have read that, but I don't recall that.

Q Did any of the people who talked to you about the Dallas County issue ever express that opinion to you?

A I beg your pardon, but it is such a long statement that I don't recall anybody just coming out with exactly what you said there.

Q You heard some comment similar to that?

A Sir?

Q You did hear some comment similar to that?

A I couldn't tell you. I have completely forgotten all of what you put in there, and I just know you read from the newspaper there, and you asked me about it, and the only thing I can say is that that is what this Mr. Bert Holmes said. I don't know the gentleman. I couldn't judge it. I do know the other -- in other words, the editorial writers, some of the other editorial writers, and particularly the managers of the paper. I am well-acquainted with them. I am not acquainted with Mr. Holmes, and I couldn't offer any comment on that.

Q That's all I have, thank you, at this time.

(Thereupon, the proceedings were recessed at 11:55 o'clock, a.m. until 12:00 p.m., at which time the proceedings were resumed as follows:

CROSS EXAMINATION

Questions by Mr. Idar:

Q Mr. Martin, I am here representing the Mexican-American Interveners in the Bagaster case.

A I am sorry. You will have to give that again.

Q I am here representing the Mexican-American Interveners in the Bagaster case. That is the case filed in Tyler. My name is Idar, I-d-a-r. I am going to be particularly

1 concerned with the House, of course, and with the
2 Mexican-American as a minority group in these
3 proceedings here. I gather from your testimony
4 earlier today that -- of course, I knew that also,
5 personally, that you had rather extensive experience
6 in Texas politics, as a State Senator for a consider-
7 able length of time, Secretary of State, and now
8 Attorney General. You are, of course, aware of the
9 fact that in Texas both the Blacks and the Mexican-
10 Americans do constitute sizeable minority groups?

11 A Yes, sir. If I remember correctly, I believe your --
12 well, I am just trying to recall the last census,
13 I believe the Mexican-Americans was around, a little
14 over twenty per cent, if I am not mistaken.

15 Q Yes, and I think the Blacks -- I may stand corrected --
16 probably eighteen, fifteen, maybe twelve per cent?

17 A No, sir, it will run around between eleven and twelve
18 per cent, I believe, if I am not mistaken.

19 Q Now, you have traveled extensively about the State,
20 particularly into the bigger cities and counties?

21 A Yes, sir. It is necessary to go that way when you run
22 for office.

23 Q And in your experience in politics, have you gathered
24 through your experience in politics that in our major
25 cities these two minority groups have a tendency to

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concentrate in certain areas of those cities?

A That has been true in the past.

Q For example, in Bexar County, San Antonio, you would have your Mexican-Americans mostly concentrated on the west and south sides of the city there?

A Yes. Of course, I don't consider them what you call a real minority in Bexar County.

Q Well, you might be right there. I understand we are getting pretty close to being ---

A Well, I mean, it is close to fifty-fifty now.

Q Yes, sir.

A In other words, the Census Bureau, we would not -- we would just have to use our own judgment, because the Census Bureau did not break down to us information as to Latin-American movements. We didn't have that information.

Q That is what I was fixing to ask you, whether or not you were able to gather any census tract data as to the Mexican-Americans in the preparation of the plan that was adopted by the board?

A To the best of my memory, we did not have a complete one then. We might have had some areas, but across the board in Texas, to the best of my memory, we did not have the Latin-American numbers as based in the -- one of the difficulties with the census tracts was that

1 the census tracts would give you, say, in the Blacks,
2 would give you, where they ran over fifty per cent,
3 the ones that we had, if they constituted ten or
4 fifteen or even forty-nine per cent, we had a
5 difficult time with that, and we had to use a whole
6 lot of outside information in order to pick this up.

7 Q You are talking about the Blacks?

8 A This is Blacks. We are talking about the census
9 tracts and the Blacks. Now, the Latin-American
10 surnames. I am sorry, I just don't have that much knowl-
11 edge. I do have a knowledge of Bexar County, and I
12 would agree with you that most of the ones who have
13 Spanish surnames are in the south and in the west
14 parts of Bexar County.

15 Q Yes, but getting to the Blacks for just a second, you
16 indicated that even as to the Blacks, when they were
17 a substantial minority in a given area or a census
18 tract of, say, ten or fifteen per cent, that in those
19 cases you sought or made an effort to see if there
20 was any other source of information; is that what you
21 stated just now?

22 A Oh, yes, we tried to get what information ---

23 Q All right.

24 A --- what information we could. That was one of the
25 things we tried to do in the lawsuit.

Q You are aware that we did have 1960 census figures, as far as the Mexican-Americans, that would give you a fairly good idea as to how they were done into different census tract areas, where they were concentrated at the time of that census?

A No, sir, I don't think the 1960 census was ever presented to me.

Q You don't know whether the staff that worked on these plans had that information available?

A They had the 1970 census, but not the 1960. I don't recall that, sir.

Q You are not aware that you did have this information available for the 1960 census, that a special study was made of the Spanish-speaking population in the five southwestern states in 1960, and that data was available?

A If it was available, I don't recall it this morning. I am not saying it wasn't available. I just don't -- I do not recall it this morning. There were so many factors that went into this, I can't get them all, but, to be honest with you, I do not recall that at the present moment.

Q Therefore, you wouldn't recall whether or not any effort was made to try to update that information so that you could determine what the concentration of this

1 particular group might be in the different counties/
2 where they formed a sizeable proportion of the
3 population?

4 A You would have to ask Mr. Bob Johnson and the Legis-
5 lative Council. They did that type work. I did not.
6 They did present to us -- Mr. Johnson -- and you will
7 have a chance to examine him this afternoon -- did
8 present to us some updating of some information, and
9 where it came from, I am sorry, I did not know until
10 you mentioned it.

11 Q As a politician, you might say, with the tremendous
12 amount of experience that you have in Texas politics
13 and as an attorney, and Attorney General of the State
14 of Texas, you, of course, are aware that one of the
15 crucial issues involving redistricting is whether or
16 not the plan that was arrived at would have a tendency
17 to dilute or cancel the votes of minority groups?

18 A That is one of the tenets of the Chaves case. The
19 way I understand the law, that was one of our duties.

20 Q It is my understanding from your testimony this
21 morning that you did give your staff copies of court
22 decisions and Law Review articles and other material
23 that related to the legal aspects of redistricting?

24 A Yes, sir.

25 Q But do you recall at any particular time whether you

1 personally instructed the two people, the two Assistant
2 Attorneys General that were working with the other
3 people who were working on the plan, did you make any
4 kind of an effort to warn them specifically as to the
5 situation, both of the Blacks and of the Mexican-
6 Americans, and how they might be affected by the
7 ultimate plan that might be arrived at?

8 A Oh, yes, sir, that would be one of the main things
9 that we instructed them to watch for.

10 Q Did you specifically discuss Bexar County with them?

11 A I am sorry, I cannot recall whether we discussed it
12 specifically or not. We took the map here on two or
13 three occasions and went through it county by county,
14 and whether or not -- I am sure we did, but I just
15 don't recall it, and I am sure that -- all I can say
16 is, I am sure we did, but I don't recall exactly at
17 this particular moment what day it was or anything.

18 Q Do you know whether you specifically discussed Dallas
19 County?

20 A Yes, sir, I do recall visiting and talking to the
21 various and sundry ones about where the -- concerning
22 the percentages in the census tracts that might be
23 located in this, yes, sir.

24 Q Was that as regards the Black or the Mexican-American,
25 or both?

1 A Both, sir.

2 Q As to both?

3 A Yes, sir.

4 Q Did you -- I think you indicated this morning that
5 the plan that was finally adopted by the Board was
6 shown to you a day or two before the Board actually
7 met to adopt the plan?

8 A Yes, sir.

9 Q And that prior to that, there was some kind of a
10 meeting of the minds among the members of the Board
11 as to whether or not you were going to go for single-
12 member districts or multi-member districts in the
13 bigger counties. I believe you indicated there was
14 a meeting of the minds sometime prior thereto?

15 A Well, that was a -- in other words, the staff over
16 there brought the plan in here, and that was the way
17 it was written, and Mr. Spellings told me that he had
18 two to sign this particular plan when it was presented
19 to me.

20 MR. CUNNINGHAM: I didn't understand you.

21 A I said he told me at the time that there were two
22 other members of the Board who were willing to sign
23 this particular plan, and that I was -- that was
24 presented to me, and I consented to sign it, too, and
25 I am trying to repeat my earlier testimony. If I am

not mistaken, that was sometime on Tuesday -- it could have been Wednesday. I think it was on Tuesday before we actually passed or signed it on Friday.

Q Who were the two members of the Board that he told you were ready to approve or willing to approve the plan?

A Mr. Brown and Mr. Bob Calvert, Robert W. Calvert.

Q All right. Had he -- did he indicate whether he had already shown the plan to them at the time that -- or prior to the time he showed it to you?

A I don't know that he made the statement that he had been showing them anything. He just -- the best I can do is repeat back to you what I said, that he indicated to me that there were two of them that would, and Mr. Calvert himself had told me that the plan -- he had called me and told me he had seen the plan and that the plan was agreeable to him, and that was -- I don't know, maybe an hour or so before -- now, I may have gotten -- I mean, the time, I don't remember. I am sorry. It was during the day, and I think it was on Tuesday, but these things, I am just sorry, it has been some time. I can't recall exactly. If I am mixed up on it, I am sorry.

Q The one thing -- I followed your testimony very closely this morning, and we still have not been able -- at least in my own mind, I have not been able to conclude

1 who actually made the decision as to whether we were
2 were going to have single or multi-member districts for
3 the other major counties aside from Harris County.

4 Now, you have testified that the plan with single-
5 member or with multi-member districts for Dallas, and
6 presumably, Bexar and every other major county except
7 Harris was presented to you either on Tuesday or
8 Wednesday?

9 A Yes, sir, I think it was on Tuesday.

10 Q What I am trying to determine, though, is at what
11 point the Texas Legislative Redistricting Board, A
12 with yourself as Chairman, gave the staff any
13 instructions as to the policy decision of whether to
14 go for single or multi-member districts in these
15 major counties. Are you trying to tell me that you
16 left this important policy decision entirely up to
17 the staff, and that you would have approved anything
18 the staff gave you, whether it was single-member or
19 multi-member?

20 A No, I wouldn't go as far as to say I would have
21 approved just anything they brought in here at all.
22 I didn't say that at all. We gave a broad outline to
23 them, and the plan that was brought in to me, and
24 I believe this is about the fifth time I have told
25 you, that was the map that I saw. During that time

1 I was -- I don't believe I was ever in Mr. Spellings'
2 office. He was over here several times, and it seems
3 like to me I saw him come down at the Capitol, and I
4 believe it was in Mr. Bob Johnson's office. I believe
5 Mr. Bob Johnson was doing as much work on it as Mr.
6 Spellings, and that's the best I can tell you, sir.

7 Q But was the staff ever given any instructions before
8 they came forward with that plan as to whether they
9 were to draw a plan that would constitute multi-
10 member districts for the major counties?

11 A I am sure they were. I am not familiar with when that
12 order was given, and by whom it was given.

13 Q It was not given by you, then? You would have
14 recalled if you had so done?

15 A The major drawing was done by Mr. Robert Spellings,
16 and I do not recall giving him any instructions at

17 all.

18 Q As to Dallas County you testified this morning that
19 you apparently made your decision based on the people
20 that you heard from from Dallas County and what their
21 wishes were. Do you recall that at the -- I believe
22 it was the meeting of the Legislative Redistricting
23 Board held on October 4th, do you recall that a Mr.
24 Victor Robertson, Jr., of the firm of Lewis, Howles &
25 Grace in Dallas, testified as to certain polls that

1 had been taken in Dallas County?

2 A I recall that Mr. Maury presented a poll that he said
3 was made by Mr. Lewis -- Oh, Alec Lewis. I don't
4 know anything about Lewis, Bowles. Alec Lewis. He
5 presented some sort of a poll of some sort at that --
6 the minutes will show what -- I mean, the testimony
7 will show.

8 Q All right, sir.

9 A But there was a poll presented at that particular
10 meeting, and, if I remember correctly, Alec Lewis
11 had conducted some sort of a poll. I do not know how
12 many people he talked to or who they were, or what
13 questions he asked.

14 Q Let me very briefly refresh your mind as to the
15 proceedings that transpired.

16 A I would agree. I am not trying to shortchange you.

17 Q Okay.

18 A But I will agree whatever is in the record there is
19 in the record.

20 Q All right. The record reflects that Mr. Victor
21 Robertson, Jr. testified at that hearing, and he
22 indicated that a poll had been taken in January,
23 1966; another poll was taken in the spring of 1968,
24 and still the last poll was taken a few months later,
25 and that on that last poll, this was a countywide

poll, it indicated that 61 per cent of the people polled had a preference for individual districts. I believe he further testified that from the time of the first poll in '64 until the last one in '68, that the preference of the people had steadily gone up in favor of single-member districts for that county. Now, what I -- the reason I was laying the predicate on that is to ask you whether or not this evidence was weighed by you in assessing what the wishes of the people in Dallas County were, or whether you went strictly on the phone calls and letters and contacts that you had from the different business leaders and attorneys and other people that you testified you heard from?

A Yes, sir. That was -- certainly we considered that, but I have used Mr. Alac Lewis in the past, and, the fact of the business is, he has made at least four or five polls for us, and when he gets down to a single county, he always conditions that as -- in other words, it is difficult to evaluate on account of the small number of people that you see, and I am not saying that that is what the man testified. You paraphrased it. I am not vouching for your testimony. You paraphrased what the testimony said. The only thing I can say is, we certainly did hear the evidence of what Mr. Alac Lewis, who is some sort of a pollster up there,

1 had made a poll. I have no idea as to who paid for
2 it or what the question was or anything of that sort.

3 All that I can tell you is that there certainly was
4 some testimony offered along that line.

5 Q Now, you further indicated that one of the factors
6 as far as giving Harris County single-member districts
7 was the fact that it had a rather extensive network,
8 a network of highways and so forth. Now, isn't that
9 actually true of any other major city, Dallas, San
10 Antonio, El Paso? They all have physical character-
11 istics, highways, freeways?

12 A Yes, sir, except that the east to west road that goes
13 in toward Tarrant County is a toll road, and there is
14 no development except industrial development, and
15 no housing on it much, and there are no toll roads in
16 Harris County, and I am no highway expert at all --
17 don't misunderstand me -- but Harris County is further
18 along with the highways than Dallas County, and has
19 been that for some time. Actually, Bexar County, as
20 far as loops are concerned, is further along than
21 either one of those two. Dallas County is third in
22 the race as far as highways are concerned.

23 Q As far as the cost accounting, you indicated you
24 have been involved in political campaigns, and you
25 do appreciate the cost accounting?

1 A: They do cost money, certainly.

2 Q: Under your single-member district plan for Harris
3 County, the average representative running in that
4 county under the plan adopted by the Board will have
5 to represent himself with roughly only seventy-four or
6 seventy-five thousand people, in round numbers;
7 actual voters, the registered voters, would be less
8 than that; that is correct, is it not?

9 A: Yes, sir, but you have got no way, that I know of,
10 that you can get the TV stations to just cut the
11 audience out to that particular ---

12 Q: Well, the point is ---

13 A: In other words, the difference in making a race, in
14 my opinion, is, it is expensive either way you go.
15 I wouldn't say that one of them is negligible and
16 the other costs a lot. I would say it costs a good
17 deal of money either way you run.

18 Q: Is it your position that a candidate running with a
19 constituency of seventy-five thousand people is going
20 to need as much television or radio time as if he had
21 a constituency of one million three hundred thousand
22 people, as you do in Dallas?

23 A: You use "if" in there, and that "if" is taking a lot
24 of factors, and you have to take in the factor of
25 what kind of opponent you have and how much he is

spending. That is just something I couldn't answer.

In other words, you have got to, if you -- there is no use in us getting off into how to run a race, but you have got to watch your opponent.

Q What I am wondering is whether or not you considered the cost factor involved as far as deciding whether to go for the single-member or the multi-member districts in the different counties that are in question here?

A I don't recall that there was any discussion made on the actual cost of running a race in Dallas or Harris Counties, other than to say that I think every one of the Board members -- well, I shouldn't say every one -- I don't know -- but as far as I was concerned, it costs a good deal of money to run a race in a metropolitan area, regardless of what race you are running for, whether it be for the City Council or otherwise. It costs quite a bit of money.

Q And as far as the minority groups, the Mexican-Americans, say, in Bexar County, and the Blacks in Dallas and other areas, did you at any time indicate to your staff that you would like to see a plan of single-member districts to see what kind of representation they might be likely to get under that plan, in contrast to a multi-member districting plan for Bexar and Dallas Counties? Did you show any interest whatever to see

1 what the two alternatives might come up with or how
2 it would affect the minority groups?

3 A The only thing I can say is, as I testified earlier,
4 I do not recall such a plan being offered to me, and
5 I don't have an estimate of what it would cost, on
6 account of the variables that go into it. I couldn't
7 give you an answer to that, because it is too specula-
8 tive as to what kind of an opponent you have got, and
9 what kind of a race, and whether it is a close race
10 or otherwise. A close race always costs more than an
11 easy race.

12 Q I think you further testified that a large factor
13 that weighed in your mind, as far as Harris County
14 was concerned, was the unanimity of the people that
15 testified from that county and the fact that apparently
16 most of them, or the biggest percentage of them, were
17 in favor of single-member districts for that county.
18 Would the lack of testimony on the part of people,
19 say, from Bexar or Dallas Counties, or the lack of
20 unanimity, say, in Dallas, that is, the opposite of
21 what happened in Harris, was that a factor that you
22 also weighed in deciding to go for multi-member
23 districts in both Bexar and Dallas Counties?

24 A Well, I would say that we would go on a test of
25 preponderance of the evidence, and that would be the

1 best test that I could give you. That was what was
2 in my mind. I certainly wouldn't use the scintilla
3 test or beyond a reasonable doubt test at all. It
4 would be the preponderance of the evidence.

5 Q And that would be a preponderance of the people that
6 contacted you, or that appeared and testified at the
7 hearings that the Board had?

8 A That's all I could know, would be what came to my
9 eyes and my ears. Of course, some people came in.
10 They were representing groups, and, of course, you
11 would give some weight to them saying that, "I am
12 representing so-and-so, and so-and-so and so-and-so,"
13 and the main way you get your evidence would be
14 through your eyes and through your ears.

15 Q By the people that actually take the trouble to write
16 or call or come up and show up at the hearing?

17 A Yes, sir, those who would express an interest in it,
18 and also that, as I testified earlier, would be from
19 what knowledge that I would have of matters after
20 being in politics for some time, as to whether or
21 not -- what the wishes were.

22 Q Of course, you have been in politics long enough to
23 appreciate the fact that your minority groups, both
24 your Mexican-American and Black, by and large, are
25 silent in this matter; they don't have the means to

1 come up and testify or write a letter or make a
2 telephone call or send a wire; consequently, if we
3 are going to make a political decision of this type
4 based upon the people who either write or telephone
5 or come and appear, those people will not be
6 reflected at all?

7 A That's the reason why I answered just a moment ago
8 that I took the other factors of my own knowledge
9 into it. In other words, you have to balance that in
10 your mind, because -- as to those who are the most
11 able, and do the best you could to try to figure out
12 what the wishes of the public are, and that is quite
13 a few factors.

14 Q But, by and large, your, as you stated, your decision,
15 like you stated, was a political decision?

16 A Yes, sir, and I mean -- I want to re-emphasize, I am
17 not talking about running for office. It is a matter
18 of politics as to how the State shall be -- should be
19 apportioned, and that was exactly what we tried to
20 do.

21 Q That's all I have.

22
23 **CROSS EXAMINATION**

24 Questions by Mr. Malkin:

25 Q General Martin, my name is Stuart Malkin, and I

1 represent Curtis Graves in the Houston case.

2 A Yes, sir. This is Senatorial?

3 Q Right. We are going to switch gears and look at the
4 Senate.

5 A That's what I was trying to get in my mind.

6 Q As I understand it, sir, you missed the first meeting
7 of the Legislative Redistricting Board?

8 A That is correct, sir. I did, sir.

9 Q And that particular testimony, which included testi-
10 mony of Curtis Graves, the date was August 24, 1971,
11 was reduced to writing?

12 A And I have read it, sir.

13 Q All right. And you ---

14 A I mean, I couldn't give you word for word in there,
15 but I have read it, and I have a general knowledge of
16 what Mr. Graves said.

17 Q All right. Well, if you have read it and you have a
18 general knowledge, then, I guess you are familiar with
19 the fact that the main focus in that entire hearing
20 that day appeared to be the question of the effective
21 dilution of Black votes in Harris County senatorial
22 districts; both Mr. Graves testified as to that, and
23 Mr. Barnes questioned Mr. Blythe on that particular
24 issue of the two plans, and the question of whether or
25 not Blacks were going to lose the one seat they had.

1 Is that your recollection?

2 A Mr. Barnes and Mr. Graves exchanged some questions
3 and answers. I agree with that, yes, sir. The
4 testimony will speak for itself.

5 Q All right. And it is your understanding that the
6 focus of this particular hearing was on the question
7 of the dilution of Black votes in Harris County?

8 A Mr. Graves' testimony was concerned with the Black
9 vote of Harris County, yes, sir.

10 Q And in addition to the question of -- well, let us
11 get this straight. Now, if I understand it, the
12 members of the Redistricting Board, as well as their
13 staff, were given certain Law Review articles and
14 various other evidentiary material to consider in
15 making their deliberations, and we have talked about
16 it for the House. I presume they had it for the
17 Senate, as well?

18 A The evidentiary was mostly furnished to all of the
19 members by people from the outside. The law part of
20 it was furnished by us. We furnished most of that.

21 Q All right. Now, who, if you know, selected the Law
22 Review articles that were to be distributed?

23 A They were sent copies of articles, some of them that
24 had been found by my staff, and some of them had been
25 sent in by Mr. Munny and other lawyers that are

1 interested in this case. They sent these in as evidence
2 to us, or at least showing us what the law was. I can't
3 recall exactly where all of it came from, but we did
4 have quite a bit of that.

5 Q All right.

6 A Some of it, the bulk of the case law was supplied to me
7 by my staff.

8 Q And when you were speaking with Mr. Eder a little
9 earlier, you said the question of dilution of Black
10 and Mexican-American voting was one of the specific
11 things you instructed your staff to watch for?

12 A Correct, sir.

13 Q Now, are you aware, sir, that there was a plan proposed
14 by a Senate Committee, -- the Senate did not pass a
15 Senate reapportionment plan, as I understand it, but
16 there was a plan proposed by a Reapportionment Committee
17 of the Senate, or whatever its title was?

18 A My understanding of it -- and I may be mistaken -- but
19 my understanding was that some Senators got up a
20 resolution and signed the resolution and passed it over
21 there, and that resolution was delivered to me and to
22 other members of the Commission.

23 Q All right. And that was part of the evidence you had?

24 A The form of it, I am not sure, but I think it was a
25 resolution that was just signed by quite a few of the

1 Senators involved. I don't know how many. I can't
2 recall.

3 Q You would have been, I presume, the only attorney
4 on the Redistricting Board; is that right?

5 A Mr. Bob Armstrong is also an attorney.

6 Q He is an attorney?

7 A Yes, sir.

8 Q All right. And so the two of you, as far as the
9 legal distinctions that had to be made, really
10 would have to lead the others, or at least elucidate
11 the questions to the others on legal questions?

12 A Well, Mr. Barnes had an attorney of his own. Mr.
13 Spellings is also an attorney, and Mr. Bob Johnson,
14 if I remember correctly, is an attorney.

15 Q Were the staffs the same for both the Senate and
16 House reapportionments?

17 A Essentially the same. I don't recall any changes.

18 Q And as an attorney, having read the Chavez case and
19 whatever companion cases you have read, you are
20 sure that there is a distinction in the law between
21 a political gerrymander, assuming one is proved, and
22 a racial gerrymander, that there is -- I am sorry ---

23 A A distinction between gerrymandering ---

24 Q Political gerrymandering to preserve a party's
25 interest, as opposed to racial gerrymandering to

1 dilute a racial group?

2 A Yes, sir.

3 Q And that one of these is constitutionally prohibited,
4 and the other at this time is not?

5 A That is correct, sir.

6 Q All right. Now, are you aware, sir, of the percentages
7 which were -- percentage of non-white persons in the
8 senatorial district proposed by Mr. Graves?

9 A Am I aware of it?

10 Q Yes, sir.

11 A I believe -- and this is from memory -- I don't have
12 anything in front of me to refresh me -- I think it
13 was something a little under fifty per cent. I may
14 be mistaken about that. I am just giving that from
15 memory. It was -- it seems to me it was just a
16 little bit more than what Senator Barbara Jordan's
17 district has at the present time.

18 Q And what about the percentage of the proposal by the
19 Congressional -- by the Legislative Committee on
20 Reapportionment, the Senate Committee Reapportionment,
21 the State Senate?

22 A I am not familiar with that, sir.

23 Q All right. Would you know whether or not it was
24 larger or smaller than Senator Jordan's?

25 A I just don't recall at the present time.

Q Now, in the meeting that you did attend, the second meeting, you discussed the fact, or made the statement that there would probably be some executive sessions of the Redistricting Committee in order to resolve or discuss the matters that had been presented to the Council?

A I made such a statement.

Q Did such sessions occur with regard to the Senate?

A No, sir.

Q All right. Were there any --

A There were no -- so that we will get the record, since we are trying all of these cases together, there were no executive sessions of the Commission ever held insofar as I attended. In other words, there may have been one or two meetings met somewhere else, but as far as the five of us ever being in the room together, or more than two of us in the room together, I do not know of it.

Q Were there any draft plans that the Council had, the Council staff had circulated among the Council members, proposed draft plans that they had suggested, and then were sent back for further revision?

A Yes, there was a -- the Senate plan was -- all of these plans were revised numerous occasions, and this was just like the rest of them. It was revised, and then it was

1 revised and -- in other words, that is the way you
2 do something like that.

3 Q Yes, sir. Well, as far as the revisions are concerned,
4 would they simply be sent back to the staff, saying
5 "This particular area is objectionable," or "This
6 particular matter is objectionable," for some reason,
7 or how would the revision get into motion?

8 A Usually they were -- nearly all of them were mathe-
9 matical errors or errors in which the law was
10 violated, and that was usually the case that came
11 about. It sounds like an easy job, but just doing
12 the mathematical part of it and doing it correctly
13 is a difficult job, and the unnecessary division in
14 the Representative business -- you are not interested
15 in that, but over in the Senate part, of course,
16 there was no -- the single-member district or multi-
17 member district was never discussed. I am not answer-
18 ing your question, but I thought maybe I should short-
19 cut it. We never discussed that at all. We always
20 recognized it would be single-member districts, as
21 far as the Senate was concerned, and there were --
22 some Senators would come down and talk about it and
23 point out certain discrepancies, and we would
24 certainly try to correct them, and I think the
25 Commission did the best they could to correct these

discrepancies.

Q What was the response of the Commission to Commissioner Armstrong's pointed objection that the way the lines were proposed in Harris County appeared to dilute Black minority strength, political strength?

A I don't know that there was any response ever made to him. I didn't know that he was not going to sign the report until he failed to sign it when we met, sir.

Q So that the first time that you really knew that Commissioner Armstrong had objections to the proposed plan would have been the day the signing was to be effected?

A That day was the first day that I knew he had serious objection to it, yes, sir.

Q All right. And there had been no discussion between you and him regarding Black voting strength in Harris County?

A No, sir, I didn't say that. You asked me the question did I know it up until that date, and I answered it "Yes." There had been a discussion on the day that the signing took place. He came to my office and had four or five objections to the bill, and we talked about the objections, and when he left my office, I did not know whether or not he would sign the report

1 or would not sign it. I did not know until it was
2 presented to him on the stand over there, and he
3 refused to sign it, and then Mr. Mutscher refused to
4 sign it.

5 Q What were the nature of Mr. Armstrong's four or five
6 objections?

7 A I am afraid I couldn't recall those right now. I am
8 sorry. He ---

9 Q Did they deal with dilution of Black minority voting
10 strength in Harris County?

11 A I don't recall that they did. He just seemed to be
12 dissatisfied with the Senate reapportionment, the
13 best I could put it. I don't recall any specifics
14 that he pointed out. I don't recall right now.

15 Q Was one of the factors that the Commission considered
16 that of insuring incumbent re-election?

17 A I didn't -- that is your statement. Are you asking
18 a question?

19 Q Yes. I am asking was that a factor?

20 A Oh, no. That was a very minor factor, if at all. In
21 other words, we are talking now about the Senate Bill?

22 Q Yes, sir.

23 A In other words, so that the record will show what we
24 are talking about, we are talking about the Senate
25 Bill. The Senate Bill, I don't recall that ever being

1 particularly discussed. The residences of the
2 Senators was pointed out, and, of course, I wouldn't--
3 I would be telling you wrong if I said that we went
4 out of our way to pair Senators up. We did not; but
5 we did not go out of our way to keep from pairing
6 Senators, either one.

7 Q Was one of the factors that the Council considered
8 historical analysis of the way lines had been drawn
9 in the past?

10 A Well, yes, sir, I would say that the community of
11 interest might have some minor factor involved in the
12 matter.

13 Q I am trying to get the idea or the understanding of
14 how, when you are faced with the problem of just
15 drawing lines for the State, do you start with the
16 old lines and say, "Well, we have got a population
17 deviation. We will just vary the line a little bit"?

18 A No, sir. I don't think we ever looked at the old map
19 at all. As I tried to explain it awhile ago, we
20 start out, usually one side of the State, and then you
21 try to come across and try to make it come out, and
22 when it doesn't come out, which it will not the first
23 time around, the difference -- that's where you get the
24 difference on the number of districts you have,
25 because you say, "Okay" -- let me give you -- just to

1 show you how it works, you start out and say,

2 "Okay. The ideal is this," and then ---

3 Q The ideal being numerical?

4 A Yes, that's right, and then you say, "Okay. This one

5 lacks this much," and then you say, "Okay. This one

6 lacks this much." You see, you don't have to go but

7 about ten districts, and you have done made a dis-

8 trict, haven't you, or another district, or you have

9 cut one off, one or the other, you see, and so it

10 has to all be done as a unit. Otherwise, you can't

11 do it, because the counties don't have a breakdown

12 enough to where you can make it come out exactly.

13 Neither does the census tracts. So you just have to

14 do the best you can, and that is the way it is done.

15 I did not do that type of work. That was done by

16 the staff.

17 Q But it is your understanding they would have started

18 at the east part of the State and simply ---

19 A Now, as far as the Senatorial concern, I don't know

20 where they began. I was talking about the Represent-

21 ative Districts, because there was a conflict and

22 troubles over there in Bowie County, and where the

23 Senate started, I couldn't tell you, except I do know

24 that they told me they started on one side of the

25 State and tried to come across.

Q Now, the same question with regard to the Senate Districts that you had earlier with regard to House Districts. Did you have any businessmen suggest to you, either by phone call or by letter or telegram, the way Harris County Senate Districts should be drawn?

A Well, we had suggestions from businessmen, from lawyers and from legislators, and just general across-the-board type group, yes, uh-huh, certainly.

Q Now, the plan that has been promulgated, does that particular plan reflect the suggestion of any one particular person or ---

A No, sir. As far as my testimony is concerned, I don't know of anyone who is one hundred per cent pleased with it; I would have to answer that the same as the Representative Districts. No person is a hundred per cent pleased with it.

Q All right. And so this particular plan, to get this another way, was not presented by any particular person; one person did not present this plan?

A Parts of it, of course, were. That's what you do. You piece them together. But if I had to tell you that there was somebody happy down there in Harris County right now on every line, I would have to tell you I -- of course, the great bulk of the people don't

1 know anything about it, but those who are knowledge-
2 able, I would say that no one is really happy with
3 the whole situation.

4 Q All right. Now, with regard to parts of the plan,
5 with the Harris County part, did that come from any
6 particular people in Harris County?

7 A No. There was a lot of suggestions made by the
8 various and sundry Representatives. I believe Mr.
9 Graves had a plan, and several other Senators. Mr.
10 Ogg had a plan, and some others. I don't know whether
11 Chat Brooks had one or not. It seems like he did,
12 but most of those plans were made up for their
13 particular area. That's what the -- and then we
14 would ask them to put their area into the county and,
15 to be honest with you, a great bulk of them failed
16 in that particular test. They couldn't do that.

17 Q Is there a desire on persons charged with redistricting
18 to get some type of symmetry or rational line-drawing?
19 Is that one of the factors considered?

20 A Oh, sure, that's one of the guidelines we have in the
21 State Constitution, and I would assume under the
22 Fourteenth Amendment there would have to be some sort
23 of a rational basis, but, now, that doesn't mean that
24 they would have to be square or round. It means --
25 in other words, it comes, to answer your question, is

1 that they have forbidden gerrymandering, and that is
2 the opposite of a rational basis, would be gerry-
3 mandering.

4 Q And would you characterize the present apportionment
5 plan for Harris County of the Senate seats as one that
6 is based upon reason, and a rational plan?

7 A I think so, sir.

8 Q And would you tell us what factors, other than
9 numbers, would opt you to select this particular
10 plan as opposed to any other? For instance, we
11 discussed earlier in the House the question of the
12 way highways in Harris County evenly divided popula-
13 tion, and that sort of thing. What factors with
14 regard to the Senate plan ---

15 A It would be the same testimony that I would have to
16 offer that I offered awhile ago concerning the Senate
17 plan. The same factors in the Chaves case and related
18 cases would apply, and the Constitution of our State
19 and the various and sundry other factors that were
20 taken into consideration is what you would do.

21 Q Would highways be one consideration?

22 A Well, I would say it would have a very small amount.
23 The highway would be a very small amount of the
24 consideration. We would have liked to have drawn them
25 to where they would fit the voting precincts, and we

1 got into that at one time, but it is absolutely
2 impossible to take the present voting precincts and
3 make them come out to where you could reapportion,
4 and that is sad, but that is just the truth about the
5 matter. Some factors you can't use, and voting
6 precincts is one you couldn't -- you just couldn't
7 follow them at all. Now, highways, yes, we usually
8 try to pay some attention. We didn't like to cross
9 highways because of inconvenience of the voter having
10 to drive to a cross-street in order to get back over
11 to a school and vote. Of course, these things are
12 minor, though. They are not a basic factor.

13 Q All right. Now, let me understand this. Highways
14 were a minor consideration, and you said you didn't
15 really look at the 19 -- the old lines. You started
16 afresh?

17 A Oh, we looked at them, but we didn't undertake to use
18 that as a basis for drawing lines.

19 Q Now, are there any other factors besides highways,
20 the old lines and population that went into your
21 decision for Harris County?

22 A Sir, I am in this shape: I have answered that about
23 three times.

24 Q This is the Senate, sir.

25 A I understand. Well, all right. We will come back, and

1 I will come back to what I answered awhile ago. We
2 took into consideration the compactness of the
3 districts and the -- to somewhat the community of
4 interests, the natural -- well, for instance, you
5 take where you get down there where you have got that
6 only one tube to go, you know, down in South, where
7 you have got that tunnel there, and you have got
8 other natural barriers. You take into consideration
9 the -- the main consideration, of course, is trying
10 to lay out the districts so where they will not be
11 gerrymandered, and take care of the minorities, and
12 that is the considerations that were put into the
13 plan, and you mix that all together, and you don't use
14 one particular one in saying that this is paramount.
15 The only paramount, I could say, is the restriction
16 we are under under the Texas Constitution, which in
17 the Senate is not -- it is very, very small, and the
18 other, the main paramount thing would be the decision
19 of the Supreme Court of the United States on the one
20 man, one vote matter, and that is the best I can tell
21 you.

22 Q All right. And compactness of the district would be
23 one plus factor; that is something you would strive
24 for?

25 A Yes, sir, but you can't -- at times you can't make a

1 district as completely compact as you would like to.
2 That is one of the difficulties you run into, and you
3 just have to do the best you can on that; but when
4 you do have to do that, well, you certainly try not
5 to -- you just have to, not to upset the apple cart
6 on the minority groups.

7 Q Yes, sir. And let me show you this for a second, a
8 copy of the Harris County senatorial districts which
9 appeared in the Houston Post on Saturday, October 16,
10 1971, and ask you, first of all, if that is your
11 recollection of how the districts were drawn?

12 A I just -- all I would have to do is presume that
13 Harris County -- I mean, the Houston Post printed up
14 what it was. The true record is reflected in the
15 Secretary of State's Office, would be the only one
16 that I could testify as being true and accurate. I
17 just wouldn't know.

18 Q Well, assuming that is a close approximation?

19 A I would just have to assume it. In other words, the
20 best record would be the record that is filed with
21 the Secretary of State. There were some newspaper
22 articles that were printed in error and some maps
23 were printed in error, and I don't know whether that
24 one is in error or not.

25 Q Would you say, sir, that Senate District 13, which

encompasses both the western and the eastern boundaries of Harris County, would fit the criterion of compactness, the one that stretches west, north and east, and almost encircles the City!

A I would say that they would, taking into consideration that you had to arrive at the other districts in that area, and that was the best that the Commission could do.

Q Now, when you considered the other proposed plans, was there a discussion of, for instance, Curtis Graves' plan, and a decision made, "No, we can't adopt this plan"? A discussion of Mr. Slythe's plan, and a decision, "No, we can't adopt this plan," or did you simply accumulate all of the plans and simply hand them to your staff and say, "Do something"?

A Well, I would say this, that the -- oh, one way you might say, but that's not exactly the -- we did give them general guidelines, and they did have these maps, but just so far as taking a vote on the Curtis Graves plan or any plan, we did not do that, sir.

Q And the general guidelines that you gave them would have been ---

A The things I have repeated here quite a few times, yes.

Q All right. Now, you don't know specifically why Mr.

1 Graves' plan, for instance, was rejected?

2 A I don't recall exactly why it was rejected, no, sir,
3 I don't.

4 Q Do you remember some of the discussion that surrounded
5 it?

6 A Yes, sir, I think there was some discussion among
7 my staff that it would be tending to gerrymand in
8 favor of the racial group. In other words, you have
9 got to -- you have got to -- as I understand the
10 Chavez case, you have got to -- the one man, one vote
11 deal, you have got to go both ways in this thing.
12 You just can't pick out one minority group and say,
13 "Okay; we are going to make a district, and we will
14 stick them all in that district," and this is just
15 not the acceptable way.

16 Q All right, sir. Were you aware, sir, that the plan
17 as promulgated cut down on the percentage of Black
18 minority members in any one senatorial district from
19 what it had been?

20 A No, sir, I was not aware. I was -- the only thing
21 that I do know that it was, as I stated -- testified
22 earlier, in Barbara Jordan's District, the percentage
23 was about the same. It might be -- the new plan
24 might be just a few percentage points more Blacks
25 than Whites, and, of course, that is a guess, because--

1 in other words, what we are talking about here is
2 census figures, and actually on the ground might be
3 a little different, and actually the number of people
4 who vote might be different, but as far as census was
5 concerned, that is true, yes, sir.

6 Q All right. Now, there is also an indication that
7 you took into consideration with regard to House
8 reapportionment election returns for the past ten
9 years. Was that a factor, or was voting patterns of
10 Blacks in Harris County a factor in drawing Harris
11 County Senate lines?

12 A I think we talked about that some, and we were shown,
13 I believe, the Legislative Council showed us some
14 voting patterns. I don't know whether it was ten
15 years. I shouldn't have used that ten years. It
16 would be the last -- oh, well, I would say since the
17 Kennedy election. That was in 1960, wasn't it? If
18 I am not mistaken about it, it was '60, and we tried
19 to look at some of the voting patterns since then to
20 determine where the residences were, more than any-
21 thing else. As far as trying to make one come out
22 Republican or Democrat or anything like that, we
23 didn't -- that was not one of the considerations that
24 we had.

25 Q And with regard to the community of interests, were

1 you aware, for instance, that Blacks and persons who
2 lived in what is known as the silk stocking district
3 of Harris County, the River Oaks area, for the most
4 part, voted diametrically opposed to one another?

5 A Well, I am just not that acquainted with the Harris
6 County voting. I just -- I couldn't answer that
7 question. I am sorry, sir.

8 Q And that was not brought to your attention during
9 the duration of the reapportionment considerations?

10 A I don't recall that we talked about it at all, sir.

11 Q All right.

12 A We might have. I am not saying we didn't. I mean,
13 like I say, I was in and out of the room a lot of
14 the time when discussion was going on among the
15 staff members and things like that, but I just don't
16 recall having a conversation about that.

17 Q All right. And with regard to Mr. Armstrong's
18 objections to the plan, you did not hear from Mr.
19 Armstrong any particular objections prior to the day
20 for signing; is that correct?

21 A Yes, sir.

22 Q What was the first you knew that he really had some
23 objections to the way Harris County was being
24 redistricted?

25 A Well, I don't think it was confined to Harris County.

1 He seemed to be unhappy over several points in the
2 bill, but I was very definitely of the opinion when
3 he walked out of the office that he would sign. I
4 mean, that was my opinion, that he would sign the
5 order or whatever you want to call it -- in other
6 words, the plan. I was very definitely of that
7 opinion, and I was a little bit surprised when he
8 refused to.

9 Q Now, we have discussed the method by which the House
10 plan was first presented to you, and it was here on
11 the table in this conference room. How did that
12 decision-making operation occur with regard to the
13 Senate?

14 A It was approximately the same way, but the Senate was
15 much easier to do than the House of Representatives.
16 You see, just for the record -- I know you know it,
17 but just for the record, the higher the number of
18 people in a district, the easier it is to draw the
19 district, and the smaller the number, the more
20 difficult it is to draw it. So the Senate was not
21 as -- well, if I had to put it on a percentage basis,
22 I would say it was probably a third less difficult
23 than the House, probably more than that.

24 Q When was the first time you saw the plan that
25 eventually became law?

1 A Are you talking about the Senate plan?

2 Q Yes, sir.

3 A I can't remember. It seems like to me I didn't see
4 it until the morning before it was presented the next
5 day.

6 Q Was there any discussion among members of the Council
7 as to that plan that became law, if you saw it so soon
8 before it was enacted?

9 A Oh, there was discussion going on all of the time,
10 yes, sir.

11 Q With regard to the specific plan that was adopted,
12 was there an executive session or ---

13 A No, sir. As I said, there were no executive sessions
14 at all. There was not time that I can recall where
15 more than two members of the Board that were ever
16 together, and I talked to Mr. Calvert about it in
17 his office -- he asked me to come over there, because
18 he is elderly -- and I went over to his office and
19 had the map with me, and Mr. Pat Cain went with me,
20 but he did not go in the office, just the two of us
21 were there, and I showed it to Mr. Calvert and asked
22 his reaction to it. I said, "It has been presented
23 to me, and I want to see what you think of it," and
24 he worked around a little while, and then he just came
25 back and said, "I am willing to sign it." I said,

1 "Well, that's fine. I appreciate your saying it,
2 Mr. Calvert, and we will go ahead, then, and run it
3 through the computer," and I brought it back over
4 here, and Mr. Cain -- I don't believe I did -- I
5 turned it back to Mr. Cain, and the next time that I
6 saw the plan was the occasion on which we met and it
7 was passed out by the staff to the general public,
8 and my signature was affixed to it, and I asked Mr.
9 Johnson if this was the identical plan that was shown
10 to me, and if you will look back in the record, his
11 answer was to me, "Yes, it was," and then we were
12 sworn. The Constitution requires us to be sworn, and
13 we all were sworn, and then they took our acknowledg-
14 ment on the matter, and that was the conclusion of
15 it, and I personally carried it down and delivered
16 it to the Secretary of State and received a receipt,
17 and that is the way it was worked.

18 Q From where did you get the plan?

19 A Sir?

20 Q From where did you get the plan that you took over
21 to Mr. ---

22 A Mr. Robert Spellings brought it to me.

23 Q All right.

24 A I say "brought it to me." Let me say this: He
25 brought it over here, and this is hearsay, but I am

1 just telling you. You asked me. To the best of my
2 knowledge, he brought it over and delivered it to Mr.
3 Pat Cain, who is one of my Assistants. Mr. Cain did
4 not look at it; he brought it to me rolled up, and I
5 brought it in this room and looked at it, and the
6 two gentlemen who were helping me, we went over it
7 together, and we determined at that time that we
8 could live with it, and while it was not a hundred
9 per cent suitable to me, the time element entered into
10 it, and we had to get on. By that time, we had -- we
11 knew we had to do the House, and so we -- I said, "I
12 believe I can sign it," and I said, "Now, as Chairman,
13 I think I should present it to Mr. Calvert and see if
14 he is willing to sign it," and he did, and then it
15 was presented -- after Mr. Calvert was presented, I
16 believe Mr. Cain carried it to Mr. Bob Armstrong's
17 office, and then he came back here the next morning,
18 if I remember correctly, around 10:00 o'clock in the
19 morning, and that was -- I had a conversation with him,
20 and then that afternoon, or morning -- I don't remember
21 exactly, but a few hours later -- maybe he was here at
22 9:00 and we met at 11:00. Anyhow, it was a few hours
23 later, an hour and a half or two hours later, we met
24 over there, and it was adopted.

25 Q For the record, sir, would you identify Mr. Spellings?

1 Who is he?

2 A Mr. Spellings is a lawyer and an assistant to Mr.
3 Barnes, to the best of my knowledge. He was
4 instrumental in and did a lot of work. I would say
5 he did the majority of the work, he and Bob Johnson
6 did the majority of the work on the reapportionment,
7 as far as the scribes' part of it is concerned.

8 Q And as far as the first time your staff saw the
9 plan, it would have been when Mr. Spellings brought
10 it over?

11 A That's right. My staff had prepared a plan, but
12 after I looked at it, it was faulty, and I had to
13 reject it.

14 Q And how was it faulty?

15 A I'll declare, I don't remember now. There was
16 something wrong with it somehow. It had too many
17 Senators, or not enough, one or the other. I think
18 that is what happened. That sounds silly. Right
19 now, you would say, "Gosh, looks like you could
20 count," but when you are working one of these up,
21 it is just not that easy, and I think that's what
22 was the matter with it. I am not certain. One of
23 those gentlemen, you can take his deposition, and he
24 can tell you. I have forgotten what it was, but
25 something was wrong with it, and that was presented

1 to me on the day before Mr. Spellings brought his
2 over or sent it over here.

3 Q Now, when you first received the plan that was
4 promulgated, you analyzed it, as you testified, and
5 stated that you could sign it?

6 A Yes, sir.

7 Q What were the factors that you examined in that
8 particular plan?

9 A Well, I mostly had to take the word of the staff on
10 the various and sundry factors, and I quizzed them
11 as to whether or not it complied with the one man,
12 one vote test, and I asked them, I said, "I want
13 to make certain, now, does it -- do you feel like it
14 will pass the Chavez case insofar as the racial --
15 the protection of the racial or other type of
16 minorities?" And the answer was, "Yes," it would
17 pass the test, and I -- to be honest with you, I
18 had Mr. McDaniel to look at it, my attorney, who is
19 sitting here, and he gave me an affirmative answer
20 on the various and sundry questions. I didn't get
21 to all of them, but I asked them various and sundry
22 questions, and they vouched to me that it would, and
23 I took their word for it, and I made some spot checks
24 on it, and the best I could find, they were correct
25 in their answers, and I have to trust people who work

for me.

Q Were any of your questions that you asked relating to the dilution of the Black voter strength in Harris County?

A Yes, sir, that was one of the discussions we had.

Q And what were the answers that you received?

A The answer we received was if the Black vote were increased in one district, we would be guilty of gerrymandering, and it had to remain approximately like it was.

Q So, as I understood it, the people who were all speaking for the most part about changing of the lines different than the ones that were enacted on Harris County Senatorial Districts were attempting to get additional Black strength; the State of Texas was concerned with the reverse of gerrymandering, but, in any event, the racial make-up of the people in Harris County was one of the prime considerations in drawing these lines?

A That is -- the one man, one vote and the racial make-up are the prime responsibility which the Supreme Court of the United States might knock it out on, and that is -- yes, sir.

Q All right. And so you were concerned with drawing lines that in part were based on race?

1 A No, sir, I don't say they were based on race. They
2 were based ---

3 Q It had a racial factor in it?

4 A Well, it had to have a reverse of the racial factor;
5 in other words, we had to show that -- I mean, we had
6 to draw the lines to where they would neither favor
7 nor discriminate against, either from a racial
8 majority or a minority.

9 Q As opposed to a simple random drawing?

10 A That is correct. In other words, the general public
11 feels like -- and I have had lots of people approach
12 me on the street and say, "Why don't you just feed
13 this thing into the computer and let the computer
14 just, you know, just find it out?" Well, of course,
15 the Supreme Court didn't decide that way. They
16 decided you had to take these other factors into
17 consideration.

18 Q Do you have an opinion as to whether or not a Black
19 could now be elected as a Senator from Harris County?

20 A That is an "iffy" question.

21 Q Yes, sir. Do you have an opinion?

22 A As far as I am concerned as a politician, I would say
23 that if he was -- a Black -- and we are talking about
24 the Senate now; is that right?

25 Q Yes.

1 A If a Black offered from a district down there that --
2 on, I would say at least three districts, or maybe
3 two for sure, if they were well-qualified, and
4 everything else being equal -- that's what you are
5 trying to put it to me -- I mean, we are talking about
6 things being equal?

7 Q Well, we have already discussed the fact that there
8 is a racial ---

9 A Yes. Well, being equal, yes, sir, I would say there
10 is very much likelihood of a Black being elected from
11 Harris County.

12 Q All right. Now, you have earlier said that you thought
13 that, at least that Dallas County was most likely to
14 vote the man or vote the issue?

15 A Yes.

16 Q Where on your scale would you fit in Harris County?

17 A Well, I would say it is somewhere close to about the
18 same. The fact of the business, since the last
19 mayor's election in the City Council election, I
20 would have to revise my answer on that and say it is
21 just about the same as Dallas County. They vote for
22 the man, and ---

23 Q You are saying the last mayor's election?

24 A I am talking about in the mayor's election. I am
25 talking about the City election down there, ---

1 Q Yes, sir.

2 A --- and the School Board election. I would say that
3 as far as Harris County is concerned, that they are --
4 I withdraw what I said earlier. I think that they
5 would equally at the present time, would vote for the
6 man. I was not as sure of that until this last
7 election.

8 Q And the last election showed you that there is a
9 propensity on the part of all citizens ---

10 A I wouldn't say "all citizens." I wouldn't go that
11 far.

12 Q It doesn't break down along racial lines?

13 A No, sir, it certainly does not, in my opinion. I
14 wasn't -- I didn't -- that was your opinion, that all
15 citizens were that way, but I would say the great
16 bulk of the citizens are that way.

17 Q Now, sir, who would you say in present memory would
18 have the greatest expertise in the Blacks, the voter
19 preferences, from Harris County, people that you know?
20 Would you consider Senator Jordan one of them?

21 A I would say Senator Jordan. I have found her to be --
22 have a real good knowledge and well-balanced and way
23 above the average for a State Senator, but, on the
24 other hand, I would have to temper that with the fact
25 that she is seeking a Congressional seat, and that her

answer might not be just exactly the way she -- I mean, I am not saying she would do it consciously -- unconsciously, she might sway her answer a little bit. I mean, we are all that way.

Q What about Mr. Graves?

A I would say Mr. Graves is not a very good judge of the voters of Harris County.

Q How about the Black voters in Harris County?

A Well, I don't think that he really would be, in comparison to Senator Jordan, I would say that he was not as expertise as she is. I am not saying there is anything wrong with Mr. Graves. You asked me about his expertise in that particular line, and I would say Senator Jordan's expertise is superior to his, and that is something that, really, I don't know whether it has anything to do with this case, and certainly you just asked me about it, and I answered.

Q Are you aware of the percentage of non-Whites who live in Harris County?

A I am sorry; I don't have the figure right here in my mind. I had it at the time. I think it is around eighteen per cent, but I could be mistaken.

Mr. Reporter, strike that, if you don't mind. I don't recall that. I just don't know.

1 Is it all right with you for him to strike
2 that?

3 Q You can indicate the striking of it.

4 A I did have it at that time, but I don't have it right
5 now.

6 MR. RICHARDS: I tender for the record --
7 I have gone through the three folders that were
8 produced by Mr. McDaniel in response to my request
9 for all communications relating to the written
10 communications relating to this apportionment issue.
11 I have extracted all of the communications that I
12 found that appear to relate to Dallas County.
13 Obviously, Mr. McDaniel will want to go through
14 there, as will the other parties, but I, at least
15 at this time, would like to tender to the reporter
16 and ask him to at least mark those communications
17 relating to Dallas County as a part of this record
18 on my representation that these are all matters that
19 I extracted from the files that were produced here
20 by Mr. McDaniel. Subject to your right to check
21 them, is that agreeable?

22 MR. McDANIEL: Well, I have no objection to
23 Harry reproducing them.

24 MR. RICHARDS: Well, he can attach them to
25 the deposition as being that which was produced in

1 response to our request, and I am not offering them
2 into evidence.

3 A I would have to take each one of those myself, and
4 I am sorry, I just -- I will let them speak for
5 themselves. If you want to introduce them that way,
6 I have produced them, and it doesn't make any
7 difference to me.

8 MR. McDANIEL: Let him produce them. I
9 don't care if he produces them. If we have objec-
10 tions to them, we will make our objections at an
11 appropriate time, and if I find others in the record,
12 I will put them with them, and if I think some of
13 those are inappropriate, why, I will voice an
14 objection.

15 MR. RICHARDS: Sure.

16 MR. LUNA: Let me ask this, now. Now, you
17 are simply asking to have them marked as exhibits
18 that the Attorney General was asked to produce, and
19 did produce?

20 MR. RICHARDS: Yes.

21 MR. LUNA: You are not offering them as
22 evidence in this case; they are a part of the depo-
23 sition?

24 MR. McDANIEL: That is correct.

25 MR. RICHARDS: If we want to offer them at

1 some later time, I would have to offer them. I am
2 just trying to get them identified.

3 (Thereupon, the deposition was
4 recessed at 1:30 o'clock, p.m.
5 (until 4:45 o'clock, p.m.,
6 (December 27, 1971, at which time
7 (the proceedings were resumed as
8 (follows:

9 CROSS EXAMINATION - (Cont'd)

10 Questions by Mr. Nelkin:

11 Q General, when we broke off, I was questioning you
12 about -- I am not sure what I was questioning you
13 about, but, in any event, one of the things we had
14 talked about earlier in the deposition was the
15 question of businessmen in Houston whom you had
16 consulted with regarding Senate lines, and I would
17 like to know if one of the businessmen that you
18 talked with was the publisher of the Houston
19 Chronicle, Mr. Collier?

20 A I talked to Mr. Collier about reapportionment, I
21 think, on maybe one or two occasions over the tele-
22 phone.

23 Q Would that be regarding the House, or Senate, or both?

24 A It was both. He had some ideas as to both the Senate
25 and the House.

Q All right. Did he submit a specific plan, or have
someone draw up a plan for the Senate?

1 A Not that I know of. He was speaking in general
2 terms with me. He didn't bring any map and give me
3 a map at all, no, sir.

4 Q Was there ever a discussion of corporate income tax
5 during the duration of the discussion concerning re-
6 districting of the Senate?

7 A Now, you are referring to me and Mr. Collier?

8 Q No; I beg your pardon. The members of the legisla-
9 tive Redistricting Board.

10 A No, sir, I don't recall the corporate income tax ever
11 being mentioned in any of the discussions I had with
12 any of the members of the Board.

13 Q And did you have an occasion to speak during the
14 deliberations with Senator Barbara Jordan?

15 A I believe that I talked to her maybe once or twice
16 informally. She never did come to my office, and I
17 never did go to her office, and I don't recall ever
18 talking to her over the phone, but I have a faint
19 recollection that I did talk to Barbara Jordan on
20 maybe one occasion. I am not certain about that. I
21 am just sorry, but, you know, when you see hundreds
22 of people every day, you can't remember everybody,
23 but I know I did speak to Barbara Jordan one time. She
24 and I have always been good friends, and I said to her
25 something about it, and she is usually in a very jovial

1 wood, and she laughed and said she didn't envy me
2 the job I had, or something like that. Said, "I am
3 sure glad I don't have to put up with any part of
4 it," or something like that. I don't know, but it was
5 along that line. But as far as her getting a map out
6 and showing me what she wanted or what was desired,
7 I don't recall that. Now, she might have, but I do
8 not recall it.

9 Q All right, sir. As I understand it, perhaps she
10 suggested a method by which the lines could be drawn
11 for the Senate, but you don't recall?

12 A I don't recall that she ever got into that particu-
13 larly, about the method. To be honest with you, if
14 she did, I don't recall if she did at the present
15 time.

16 Q Do you happen to know if it is possible in your
17 conversations with her you discussed the corporate
18 income tax?

19 A I don't ever recall talking to her about the corporate
20 income tax at all. Most of my conversations with
21 Senator Jordan have been just, "Hello there. How are
22 you getting along," and that type of thing. I have
23 never, outside of my own legislation that I would be
24 interested in over in the Senate, I haven't ever talked
25 to her about taxation at all. I am pretty sure I have

1 never talked to her about taxation.

2 Q Did she voice any objection, general objection, that
3 you know of regarding the dilution of Black voter
4 strength in Harris County regarding State Senate
5 races?

6 A I don't recall that she did, no, sir.

7 Q All right. Now, one other thing that I am rather
8 foggy on ---

9 A All right, sir.

10 Q As I understand it, you and the other members of the
11 Council simply submitted Law Review articles and the
12 Chavez case and the others ---

13 A I was the one that presented those.

14 Q Okay. You presented these to the members of the
15 Council or to staff members?

16 A No, I presented them to the members -- we call it
17 Commission, if you don't mind; either way you want to
18 call it, whatever it is. Anyway, I think I presented
19 one or two to Mr. Bob Culvert, and then he told me he
20 didn't care to see any more of them at that particular
21 time, and I don't know whether I presented all of them
22 to him, but I did present what I had to Mr. Armstrong,
23 and I do know that Mr. Armstrong came to the Capitol --
24 I mean, came to the Supreme Court Building and secured
25 other information from other people in the building

1 here. At least, that's what he told me he did, and I
2 saw him over here with several cases that had been
3 passed on all the way from Baker vs. Carr up to the
4 Chaves case.

5 Q Did Mr. Johnson and his staff receive this same
6 material?

7 A I gave it to them, yes, sir.

8 Q Did you specifically give it to Mr. Johnson?

9 A No, I very seldom dealt with Mr. Johnson. It was
10 with Mr. Potter, and I can't think of the other
11 gentleman's name, some other gentleman that worked in
12 his office there. I don't recall having a conversa-
13 tion with Mr. Johnson about the matter at all.

14 Q Okay. With regard to the ultimate map of the
15 Senate,---

16 A Yes, sir.

17 Q --- including the map of Harris County Senatorial
18 Districts ---

19 A Yes, sir. Are we talking about the Senate now?

20 Q Yes, sir.

21 A I want to be sure we get these straight.

22 Q Your testimony, as I recall it, was that the day
23 before the matter was finally passed, you saw the plan
24 for the first time?

25 A The completed plan. Now, I had seen the working

plans, on several occasions. In fact, I made one visit to the Legislative Council Office over there and talked to them a while, and I made a visit to -- I don't know whether it was Mr. Spellings' office, or somebody else's office. It was an office on the ground floor; and it seems to me like it was on the ground floor, and we looked and talked for a good long while on that occasion about the Senate reapportionment, but insofar as the completed map was concerned, the first time I saw it was a couple of days before it was adopted.

Q Was the plan adopted, was it drawn by the Legislative Council?

A Well, I couldn't swear as to who actually did it. I assume -- and this would be just an assumption on my part -- it was a joint effort of the Legislative Council and Mr. Spellings, and I don't know -- my people. I knew Mr. Jones was over there off and on. I don't know just what part he played in it. He was more or less representing us in the -- just the scrivener part of the matter, and that's the best I can tell you. I am just not familiar with these particular details.

Q But the Legislative Council was charged with utilizing all of the factors that we talked about before?

1 A Yes, they were -- this happened when I was not -- the
2 first time that the Board met, it was my understanding
3 that they charged Mr. Bob Johnson, or asked him if
4 he would act as more or less secretary and do the
5 paper work, and Mr. Johnson very graciously consented,
6 and it was -- that was a gentlemen's understanding
7 or general understanding of the whole bunch, that Mr.
8 Johnson was to help with the paper work in the matter,
9 and was to act as secretary to the Board when we were
10 in session, which he did. Now, as far as being
11 elected as secretary, he was not; he was not. But he
12 acted as that. In other words, whenever we needed
13 something to be done, Mr. Johnson was the one who did
14 it, and he was the one that provided the facts of the
15 census tracts, and he was the one, when the lines were
16 drawn, he was the one that took the census tracts and
17 made the description of them and drew the maps and
18 things of that sort. That's the best of my understand-
19 ing. I wasn't present when all of that happened, but
20 that is my understanding about the matter.

21 Q I just have a couple of other questions dealing with
22 some other factors we talked about, like community of
23 interests and natural barriers, like highways and the
24 canal, and past elections and all of those things, the
25 Board really delegated that particular application of

these factors to Mr. Johnson's Legislative Council, and whoever else assisted him; is that right?

A No, sir, I wouldn't say we delegated anything to them except the actual doing the paper work on the matter. We -- if you want -- if you are implying that we delegated our power to somebody else, no, we did not, but if we -- we did call on them to do the nitty gritty, sitting down at the maps and undertaking to try to get these things to come out along the guidelines we laid out, the answer to that is yes, we did.

Q Well, I didn't mean to imply that you delegated your power, but I meant to say when you presented all of these questions of law, didn't you and the Board expect the Council to use them in drawing the lines?

A Yes, sir. Let me say that Mr. Potter and I had several conversations concerning the law, and some of my Assistants had conversations with Mr. Spellings and Mr. Potter, and at that time I felt confident that they understood the cases, as well as they can be understood. I am not going to tell you the Chavez case is just, you know, real clear, because it is not. In other words, the Court has moved some in its position since *Beher vs. Carr*, but all I can do as an attorney is to take what we think the Supreme Court's

1 thinking was in that and try to apply it, and they
2 seemed to understand it, and it was my understanding
3 that they understood it, and Mr. McDaniel was over
4 there on one or two occasions, and Mr. Walker was
5 there, and I think Pat Bailey was over there on one
6 or two occasions, and we had a general discussion of
7 the law, and we came so far as the meeting of the
8 minds were concerned with the plan on arriving at
9 what we felt the law was, and if we are right on the
10 law, that is going to be determined.

11 Q And you have no fixed opinion as to whether or not
12 the new lines in Harris County destroy the community
13 of interests, whatever -- as that term is used?

14 A As far as I know, they do not. I don't profess to
15 be an expert on Harris County, and one of the things
16 you learn when you run for state office, there are
17 twenty-four metropolitan areas in Texas, and every one
18 of them is unique, and no man can be a specialist in
19 all of them, and Harris County, of course, -- I am
20 not a resident of Harris County, and I have more or
21 less a working knowledge of it, probably as much as
22 any other State politician that doesn't come from
23 there.

24 Q I have nothing further.
25

CROSS EXAMINATION

Questions by Mr. Steele:

Q General Martin, I am Cleo Steele, ---

A Yes, sir.

Q --- and I represent the Intervenor in the Tyler case, Taylor Washington, et al.

A Yes, sir. That has to do with the House Reapportionment?

Q Right. First of all, in assisting me for my own personal clarification as to exactly how this whole system works, we start at some point in time in developing a reapportionment plan. I assume that you start with a blank map of the State, or several blank maps, and what have you, and you end up with an approved plan. At what point in time, now, and who is it that is responsible for seeing to it and in drawing the plan and determining what type plan you are going to have for a particular county, whether or not these racial minority groups are being held intact or being diluted or cut down, or what have you? What particular agency or what person or who keeps a check on this particular factor?

A I -- the only thing I can answer to that is the -- I was charged with the responsibility as much as the other members of the Commission, and we are charged with the

1 responsibility, and we used advice of some staff
2 members, and they are -- had a whole lot more time to
3 read cases and study them, and relied somewhat on
4 their legal understanding.

5 Q Your own personal staff?

6 A Yes, sir.

7 Q Or do you mean the Council?

8 A That's what I relied on, yes, was my own personal
9 staff; as far as the understanding of the law, that is
10 what I relied on. Like I say, there were several
11 sessions where there was discussion about the matter,
12 and then the other thing that I have not mentioned
13 is the fact that that particular question was -- that
14 seems to be of interest here to the -- I mean, seems
15 to be some question here, was argued before the
16 Supreme Court, and they came back with an answer that
17 was about what we felt was a proper answer.

18 Q Well, ---

19 A It was not -- maybe not developed as fully as some
20 people might have liked, but at least it was in that
21 particular case, and we paid some attention, of course,
22 to what the Supreme Court of Texas said about the
23 matter.

24 Q Do you come in after the plan is drawn and say, 'Well,
25 it doesn't look like any racial groupings are split

here," or do you come in at the basic level ---

A Both. We come in at the start of it and lay the guidelines down as to what we understood the one man, one vote rule to be, and how it was carried forward in the Chaves case, and then, as far as the House of Representatives was concerned, what the Supreme Court of Texas had said in cutting county lines and the at large or multi-member districts, whichever way you want to call it, versus the single-member districts. All of that was discussed, and the staff was -- based on that, they began their labors on the matter, and after it was completed -- and let me emphasize this -- maybe this is what might confuse you. If you thought they just brought a map and that I just want to see the map one time, that's not true. We visited them numerous times, and they were over here two or three times with it, and my staff was working back and forth and relaying to us what could be done, and there was lots of little points in the matter, that had to be cleared up in the matter. One little point, the maps were not clear, and we had to abandon it. For instance, where two counties, whether or not they touched each other, and we -- one map, the Land Office showed that they had 50 foot joint boundary, and another map showed they didn't touch each other, and

1 this type of thing. Those are little things that
2 sound small. They are small, but when you are trying
3 to work with thousands of people and pushing them
4 around and putting them here and there, well, that's
5 what makes it difficult. It is just like a football
6 game; you lose it, and that's it.

7 Q My question was rather general. Getting to Dallas
8 County particularly, you mentioned earlier you had
9 some contact with Mr. Zann Holmes?

10 A I do not recall. I might have had a conversation.
11 Like I say, I hate to be that way, but I can't
12 remember it all; but I do recall very definitely
13 having a telegram from Mr. Zann Holmes, and it should
14 be in those documents that were here this morning.

15 Q Do you know whether you had any contact with any
16 other Black elected officials and Black attorneys in
17 Dallas County?

18 A It seems to me that there was a couple more, either
19 city or county officials, that wired me, and I am
20 sorry, I do not know their names.

21 Q Black officials?

22 A Yes, sir. I was told by -- let me explain how these
23 things are handled in the office, so you will under-
24 stand. When something like that comes in, my staff
25 doesn't just bring the telegram to me. They pull the

card on the particular person and bring it in, and if I have had contact with them before -- and one of the gentlemen I had not had contact; the other man, I had, but they always ascertain who they are, what their occupation is, and things of that sort. That gives me some idea of how to judge them or what, you know, what -- and that is just the ordinary procedure that we always follow. And if my memory serves me correctly -- and this is just strictly from my memory -- I think there were two other gentlemen contacted me that had some official position in Dallas County.

Q Do you recall what their sentiments were as regards redistricting?

A If I remember correctly, they were opposed to running at large.

Q I see.

MR. McDANIEL: Let me interrupt and go off the record, if I may.

(Thereupon, a brief discussion was had off the record, after which the proceedings were resumed as follows:

Q (By Mr. Steele) You had indicated that you had talked with Mr. Lamm Holmes and two other officials or two other people whom you felt to be holding some official capacity?

A They sent telegrams to me.

1 Q All right.

2 A Yes, sir.

3 Q Do you know whether you had any contact with other
4 Black citizens of Dallas County, such as precinct
5 chairmen or Black businessmen, or just interested
6 Black citizens?

7 A There was one or two appeared in front of the
8 Commission at the time we had one of the hearings,
9 and I am sorry I do not know what his name was; and
10 I think one of the other gentlemen examining me
11 awhile ago said his name was Roberts, but I couldn't
12 tell you what his name was.

13 Q Okay. Do you recall what their sentiments were in
14 regard to reapportionment?

15 A This particular testimony was handled by Senator
16 Oscar Maury, and his witnesses were unanimously
17 opposed to the running at large.

18 Q I see. Okay. Now, realizing the large numerical
19 size of the Black population of Dallas County and
20 the fact that you have there what the Courts would
21 call community of interest grouping, et cetera, did
22 you instruct your staff, or did you staff on its own
23 seek out the sentiment of the Black community in Dallas
24 as to their feeling toward single-member districts, as
25 opposed to multi-member districts?

1 A Well, I don't know that the staff were fact-gatherers
2 in this particular field. I would have to say that
3 they probably were not. Most of the facts were -- I
4 say most of it, maybe all of it was gathered by the
5 Commission members, outside of the statistical matters,
6 which we testified to, such as census tracts and such
7 as that, that was furnished by the Legislative
8 Council; but as far as the sentiment of the whole
9 or sentiment of a part, or anything of that sort,
10 that wasn't -- that would be -- I don't think the
11 staff got into that particular field.

12 Q Okay. So that in approving the plan that was
13 ultimately drawn, you and your staff did so, then,
14 primarily on the basis of the statistical information
15 that you got from the voting records, rather than
16 any personal contact with the Black community of
17 Dallas, or with any data coming from the researchers
18 in Dallas County in this particular field?

19 A Let me say that I heard from various segments up there,
20 and I am certain that some of them were Black citizens,
21 and I talked with any number of people and tried to
22 ascertain what the feeling was, and that was not the--
23 in other words, the feeling was not the whole picture,
24 but at least that was one of the things we did con-
25 sider, and, of course, what the other Commission

1 members had to say about their experiences would
2 have some influence on me. In other words, it is the
3 Commission -- it was a Commission, and the things we
4 did were as a whole, rather than each individual, as
5 far as I can picture it. So, it would be hard for me
6 to explain that to you, except to say that was
7 discussed, and my instructions to the people, so that
8 I can clear your mind up on this, my instructions
9 to them was, when the maps were brought in and we had
10 a map in which the precincts were marked that were
11 predominantly Black -- where the maps came from, I
12 don't know, but it was testified to me -- it wasn't
13 testified, but it was told to me that the Census
14 Bureau figured that out of Washington, and based on
15 that, my staff was instructed -- and I agreed with
16 them after we looked at it, that we were doing the
17 best we could to -- not to either gerrymander for or
18 against the Blacks, to treat them just the same as
19 we would anybody else.

20 Q So you did have maps that supposedly outlined the
21 predominantly Black areas, and your personal contacts
22 with Blacks in Dallas County was to the effect that
23 they were opposed to multi-member or at large
24 districts?

25 A Those that you mentioned?

1 Q Right.

2 A That was their sentiments, yes.

3 Q So you adopted the plan with all of this information,
4 I guess, because you were -- you felt that the multi-
5 member district system would be better, or that you
6 objected to their reasoning, or what?

7 A Well, I -- that is, like I say, that's a lot of going
8 back and trying to get up mental processes, which I
9 can't do. I am sorry. I can't crank up and go back
10 and get those mental processes and tell you exactly
11 what processes I went through, but as I explained to
12 you awhile ago, the sentiment of the people seemed
13 to be that way. That's the way I found the prepon-
14 derance of the evidence, and the running at large
15 had not had any adverse effect on -- in other words,
16 the Blacks were getting some of their people elected,
17 and I think that in the future that there probably
18 will be more elected. I don't ---

19 Q All right.

20 A I just don't see it otherwise. That's the best I can
21 tell you. I felt like it was fair, and fair to all
22 of the people. Now, let me say this, that if you were
23 trying to ask me did I try to make this come out to
24 suit a certain ideology, I certainly did not. That
25 was not our intention, and it was never entered into

1 it at all. It was not the thing we were trying to
2 do, because the people of Dallas County have got a
3 right to feel the way they want to about anything,
4 except as I stated to begin with, as long as it does
5 not contravene or be in violation of our Constitution
6 of the State or the Constitution as interpreted by
7 the United States Supreme Court. You understand, I
8 am for the Supreme Court interpreting the Constitu-
9 tion.

10 Q Just a couple of questions. You stated earlier that
11 prior to about ten years -- maybe twelve years ago,
12 there were not Blacks running from Dallas County?

13 A I don't recall, if there was. There might have been.
14 I just don't remember.

15 Q In recent years they had educated themselves and
16 began to hold office in Dallas County?

17 A I didn't mean to imply that there wasn't qualified
18 people at that time, but they didn't seem to seek
19 office at that time.

20 Q Are you aware of more than one Black ever holding
21 State office, State legislative office at any one
22 time from Dallas County?

23 A Do you mean in the State Legislature?

24 Q Right. Has there ever been any more than one?

25 A If my memory serves me correctly, your statement would

1 be true. I think that is a correct statement. I
2 don't recall there being but one during the previous
3 years. I believe one gentleman had an unfortunate
4 accident and got killed, over here at Dawson, and I
5 thought he was a real fine gentleman, and ---

6 Q He was the only one at the time?

7 A Yes, sir; and he was killed, and then later on, Mr.
8 Zann Holmes was elected, and he is making a real
9 fine Representative.

10 Q Do you think if Dallas County were reapportioned on
11 a single-member district basis, that there would be
12 more than one Black?

13 A That would be too speculative for me to answer. I am
14 sorry. I can't answer that. I just don't know too
15 much about Dallas politics, except to say that if --
16 I would just get off into "if this" and "if that."
17 I am sorry. I don't know.

18 Q Considering the number of Blacks there, do you think
19 there are enough there to have more than one district
20 on a single-member basis?

21 A If you just set out to try to create some Black
22 districts, well, certainly, but that's not -- that's
23 not -- that would be the reverse of what we are
24 talking about, and I wouldn't be for that, either. I
25 mean, while that may be poor politics to say that,

1 that's why I am trying to follow the Supreme Court.

2 Q No further questions.

3 CROSS EXAMINATION

4 Questions by Mr. Irvin

5 Q I am Walter Irvin, Mr. Martin, ---

6 A All right, sir.

7 Q --- and I am representing Intervenor in the Tyler
8 case.

9 A Which Intervenor?

10 Q Mr. Washington, et al.

11 A All right, sir.

12 Q I would like to talk about perhaps some of the things
13 that you related earlier this morning, and things
14 that you thought should be considered in drawing the
15 House district lines. Speaking in particular to two
16 counties, Jefferson County -- are you familiar with
17 Jefferson County?

18 A I know Jefferson County. I have been in Jefferson
19 County several dozen times. I am not as well-acquainted
20 with Jefferson County as I am some other counties and,
21 to be honest with you, Jefferson County, I have never
22 been in too much, but I am vaguely familiar with it,
23 enough that -- let me put it this way: I am as
24 familiar with it as some other State politicians. I
25 have never lived there, and I have never practiced --

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1 I have tried two or three lawsuits down there, and
2 that has been my experience in Jefferson County.

3 Q Did anyone from the Jefferson County area or the
4 county itself contact you regarding their district
5 lines, at all?

6 A I was in Jefferson County at the time that the matter
7 was under consideration by our Board, and I was in
8 Beaumont and in Port Arthur, and I visited with some
9 of the Representatives down there. Now, are we
10 talking about Representative Districts?

11 Q Right.

12 A Unfortunately, they were in a bad situation, in that
13 they were going from three Representatives to two
14 Representatives, and I don't recall of any individual
15 that I talked to concerning these Representative
16 Districts that didn't say that they would prefer the
17 Representatives to run at large, rather than to have
18 the Commission choose the line and eliminate one of
19 them. In other words, the only way you could do it
20 would be to put two Representatives in the same
21 district, and they did not -- the people down there
22 that I talked to -- and I guess I talked to several
23 down about the matter -- they all had that particular
24 opinion about Jefferson County. They just didn't feel
25 like that the Commission should do that, since they

only had two, that they should run at large; and the same was true of McLennan County. They only went to two, and they -- the ones that talked to me, that's the way they felt about the matter. That's the best I can tell you on that. I don't recall any one -- there may be some letter in there. I have not -- I haven't gone through those. There may be some letter in there from somebody from Jefferson County stating otherwise, but the ones that I talked to were of the other opinion.

Q I am more trying to get at the line of what is, in my opinion, the rational way in which the lines that county and the adjacent counties were drawn, and to correct you, I think Jefferson County now has three places.

A Well, they went over -- we had to go over and take -- we had to shuffle around some.

Q Shuffle around there, but ---

A Yes. In other words, let me put it this way, so you can understand it: That area did not grow as fast as the rest of the State, and consequently the area lost a Representative.

Q Jefferson County lost a Representative?

A Yes, sir. It is my understanding, if my memory serves me correctly, they -- I think they went back a little

1 bit in population. Like Waco, they went back a little
2 bit in population. The rest of the State went from
3 nine million to eleven million, you see, and this
4 created a situation in which they would have parts
5 of -- in other words, they would have two Representa-
6 tives and a part of another one, if I am not mistaken.

7 Q Well, did you not say this morning or testify this
8 morning that some of the things that the Board
9 considered was the compactness, the governmental
10 lines, that is, the county lines and things like this?

11 A We have to, under the Supreme Court decision, we would
12 have to consider the county lines, yes, sir.

13 Q Well, what did the Board consider in -- well, let me
14 back up a minute to ---

15 A Yes, sir.

16 Q --- to correct you. Looking at the 1970 census data,
17 Travis County, for example, has 235,318 people;
18 Jefferson County has 244,775; Travis County has four
19 places; Jefferson County has three. But what I am
20 getting at is, what did the Board consider, or what--
21 tell me your views on this -- in drawing the Jeffer-
22 son County lines to take certain census tracts out of
23 Jefferson County, particularly those areas which, from
24 my studies, suggest that they are areas where there
25 is Black population, and lapping them across the Pine

1 Island Bayou over into Wharton County to the north,
2 and then to the south, parts of Jefferson County,
3 parts of Fort Arthur and that area, goes over into
4 the Orange census tract?

5 A I'll do the best I can to explain that. I don't know
6 that I ever had a real close discussion with any other
7 Board member, Commission member, over that particular
8 area down there. The only thing I can tell you is
9 that when you are working with Orange County, it is
10 a very difficult county to work with, in that there
11 is -- there is no way -- in other words, you have just
12 got one direction in which you may go, and the people
13 who worked with it felt that this was the most
14 feasible way to do it. I am not saying it is the only
15 way to do it. That was the feeling that I received.
16 In other words, that was what I was informed, and that
17 was the best that I could -- after I looked at it,
18 that was the best that I could see that could be done.

19 Now, it could be, by disregarding the rest
20 of the State, you could draw the lines differently,
21 but in order to make it work out with the East Texas
22 area, and East Texas generally lost population; South
23 Texas gained population, but Jefferson County is not --
24 what I wouldn't call South Texas. Consequently, there
25 had to be some Representatives taken out of there, and

1 this is always one of the most difficult things to
2 do, is trying to work with an area where you have
3 losing population, and that is what East Texas was
4 faced with. In other words, Jasper County and Newton
5 County, and I think Hardin County, gained a little
6 bit, but San Augustine and Shelby and all of those
7 counties up and down the State there lost population,
8 and there had to be some Representatives taken out
9 of there.

10 Q But under the Supreme Court and the State Constitution
11 guidelines, also the community of interests concept,
12 that is to be considered, and you suggested this
13 morning that that was of ---

14 A That was one of the -- I didn't say that was a para-
15 mount guideline; I said one of the guidelines we
16 looked to was the community of interests, and the --
17 I am sorry. I can't give you any more information
18 than that on that particular spot on the map, because
19 I am just not that conversant with that particular
20 spot. I don't know enough about it. I do know that
21 the road goes out north of there into Hardin County,
22 and the people generally move in that direction, and
23 they move generally in the direction toward Liberty
24 County, and that is -- in other words, the spreading
25 out has taken place those two ways, because that is

1 the only two ways they have got, unless they want to
2 go over into Louisiana, and the swamp between it and
3 Louisiana would be in there. That would be in another
4 state, anyhow, so it wouldn't be germane to our
5 discussion.

6 Q Well, let me get on to some other points briefly here.

7 A All right.

8 Q Your first statewide office, your first quest at
9 statewide office was for the Attorney General's
10 Office; is that correct?

11 A No, sir. I ran unsuccessfully -- I guess a politician
12 shouldn't own up to that this afternoon, but I ran
13 unsuccessfully for Lieutenant-Governor in 1962, and
14 I was defeated by Mr. Smith, who was elected Lieutenant-
15 Governor in the primary. I didn't run in the general
16 election, of course.

17 Q Now, so, then, your first successful attempt was --

18 A Attorney General, in 1966.

19 Q --- Attorney General in '66. All right. Prior to --
20 just for the record, how many people -- how many --
21 are there any Blacks, or were there any Black resi-
22 dents in your Senatorial District?

23 A There is a few. I had ten counties in my district,
24 and there were five counties that had practically
25 none. If you want me to name them, I will name them,

and ---

Q Let's not ---

A Well, there are five counties on west. They are ranching counties, and there were practically none. There are approximately -- Oh, I would say five, five per cent, something like that, in the other five counties. The three major counties, it would be about like that. The population has -- the Black population has gone down. They moved to the city, mostly. That was about the makeup of my district when I was in the Senate. The last session that I had in the Senate was in 1961 prior to my running for -- in other words, instead of running for re-election, everybody had to run that year, I ran for Lieutenant-Governor, and was defeated, and I was appointed Secretary of State by Mr. Connally.

Q Would it be safe to say, then, that while in office as a State Senator, you never had to court or seek out Black votes?

A No, sir, that wouldn't be fair to say that statement. There were Black voters in my district, and I received a very fine Black vote. The fact of the business is, my campaign manager among that segment is the present pastor of the Ebenezer Baptist Church here in Austin, and I have a lot of friends that come

1 from there, and they were, I guess you would say I
2 received as much support as anybody. I didn't get
3 a unanimous vote, by any means, but, then, I did get
4 good support from them, and I sought their support.

5 Q In running for statewide office, in your opinion as
6 a politician, is it -- does the Black vote in Texas
7 really count? I mean, does it make any difference?

8 A Oh, yes, sir. I wouldn't question that, because any
9 race that is closely contested -- and I am talking
10 about now where both sides come up with enough money
11 to operate, you are going to find that less than one
12 per cent is going to be the dividing line. You very
13 seldom ever see more than two per cent, and four or
14 five per cent is a run-away. So, I couldn't tell you
15 that it is not, because it is. It is a factor, and
16 most candidates seek their support.

17 Q Now, in the 1966 election, where you were successful
18 for -- in the Attorney General's race, did you run
19 unopposed?

20 A Oh, no, sir. I had a very vigorous campaign. I had
21 a first primary, and then I had a second primary,
22 and I didn't have much general election candidate,
23 if that's what you mean.

24 Q That's what I mean.

25 A I had a candidate in the general election, but he

Q&A

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1 I didn't do any work. ~~now you're here, aren't you?~~

2 Q Just for the record -- maybe I am appearing ignorant,
3 but are you a Democrat?

4 A I certainly am. I have never voted anything but the
5 Democratic ticket in my life.

6 Q Did you carry the Black vote in the '66 election?

7 A In the second primary --

8 Q In the general election?

9 A Sir? In the general election?

10 Q Yes, sir. Did you carry it in the primary?

11 A In the primary, it was split. There were three of us
12 in the primary, and it was split up. Right offhand,

13 I can't tell you what percentage it was, but it was
14 split. I carried some areas, and my opponents carried
15 some areas.

16 Q But you did carry some areas?

17 A I had a campaign group that worked with me, and we did
18 our best to get some support from the Black people.

19 Q Did you carry Dallas County?

20 A Yes, sir, Dallas County was one of my star counties.

21 Let me say this: I carried Dallas County in 1962

22 in the Lieutenant-Governor's race, and there were five
23 running. I have always carried Dallas County.

24 Q If you were to wear a label, those labels that they
25 pin on party candidates -- I don't think they would

pin me on a Republican, probably, but -- yes, I
guess they do in national elections, Liberal
Republicans, but which label would you ---
A It would be almost impossible to label me. I was
considered -- the only thing I could say would be
what -- you know, you have got your character and
your reputation, and your character is what you really
are, and your reputation is what other folks say about
you. I would have to tell you what other folks say
about me, and when I was in the Senate, I was con-
sidered a Moderate. I was author of the Old Age
Assistance Amendment, the Medical Care Amendment. I
was the author of the Lobby Control Act and the Youth
Council Act, the Parole, Adult Parole System. I was
fixing to tell you, I was the author of all of those,
which were not entirely pleasing to quite a few of
my Conservative friends, but on money matters, I have
been -- when I was Chairman of the Finance Committee,
well, I was considered a pretty tight-fisted fellow
about giving out the public's money. So, that was
what I was tabbed. In this office here, it is hard,
and it is more or less like a judicial office; it is
hard to say what I am, and I have never seen -- maybe
you all have -- I have never seen the newspapers call
me what I am since I have been in the Attorney General's

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1 Office. The only thing I can say, I have apparently
2 pleased most of the folks, because I don't have any
3 opponent at the present time.

4 Q But would you put -- let's place an arbitrary label
5 on yourself now.

6 A I am sorry; I wouldn't do that at all. In the par-
7 ticular position I am in, I try to follow the law as
8 it is, and let the chips fall where they may, and as
9 far as labels, I really don't know what that has to
10 do with the lawsuit, except I will say that I have
11 been a Democrat all my life. I have never supported
12 anything but the Democratic ticket, and I will
13 continue to support the Democratic ticket, and as
14 far as the vote goes ---

15 MR. LUNA: That is a good enough label,
16 General.

17 A --- I cut it right across -- In other words, I cut
18 it across the board. I get as many votes -- well,
19 you take a county and look at the returns in the last
20 four years, I get about as many votes from one
21 section as I do from another section.

22 Q Well, the reason for the last question -- and I
23 apologize for going astray on that -- but earlier
24 this morning you talked about things that you con-
25 sidered in drawing up the plan for Dallas County?

1 A Yes, sir.

2 Q And you talked about the election returns for the
3 last ten years, the pattern of Black voting in the
4 last ten years, and the preponderance of the evidence?

5 A Pardon me; excuse me, but I was talking more at that
6 time -- I believe the conversation was more about
7 Republican and Democrat, and that was what I was
8 calling election returns. I don't have the exact
9 election returns brought forward on the Black vote
10 at that time. If I misled you, I am sorry.

11 Q You later testified in a question put to you that you
12 felt that the scheme, apportionment scheme for Dallas
13 County, was fair to the Blacks?

14 A Yes, sir.

15 Q But you later testified -- well, you testified this
16 morning that you thought the apportionment scheme
17 for Dallas County was fair to the Blacks?

18 A Yes, sir.

19 Q But did you not also make a statement that Blacks tend
20 to vote Liberal?

21 A Well, actually, that was really -- I may have made
22 that statement, but, then, the Blacks have in the
23 last -- that was in the earlier elections. At the
24 present time, well, they are not showing any real
25 set pattern. They seem to go for the man. Now, when

1 it gets between Democrats and Republicans, they vote
2 Democratic, but the other, I will say that during the
3 last few years, they vote more for the man. They are
4 getting more and more that way all of the time. If
5 I misled you, I am sorry.

6 Q One final question: As a politician who has served
7 the State of Texas for -- I think you said twenty-
8 five years?

9 A Twenty-four years.

10 Q Twenty-four years?

11 A I mean, this next year -- twenty-three years right
12 now.

13 Q Would you say that Texas as a whole, in comparison
14 with the knowledge that has been compiled by the
15 various Commissions, National Commissions and even
16 State Commissions, would you say that it is still --
17 what would you say is considered -- what would you say
18 is considered a State, in the southern mentality,
19 since that is -- things that you know, the de jure
20 type of laws affecting Blacks, would you say Texas
21 is still considered in that vein, or would you say
22 Texas is a State that you separate from the South
23 altogether?

24 A Oh, I very definitely would say that it is separated
25 from the South, and since I have been in this office

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and have seen the integration of the schools, there has been a one hundred per cent success of integration of schools in the rural areas of Texas, where you are supposed to have your so-called red-necks, and you are not having any trouble in the rural areas at all. They go to the same schools; the only trouble we have, as I mentioned this morning, at all is the bussing matter, which is not unique to Texas. That is in Michigan and other places, too. And in my humble opinion, I think this will be straightened out in a couple of years, a year and a half. Let's hope it is.

Q Well, let's go back. Go back prior to the 'sixties -- I mean, going on back through the history of Texas since you have been able to observe and make an analysis of the situation here in Texas, and comparing it with the rest of the country, would you say Texas had a southern mentality?

A Well, I couldn't answer that a hundred per cent. I would say that the east part of Texas, the one hundred miles nearest the Louisiana and Arkansas borders, had more of a flavor of the old South, and the rest of Texas -- and certainly the immigrants to Texas, and, after all, Texas has gained more immigrants than we have births -- they have tended to be part of the

West, and their mentality was turned toward the West, but this -- so far as East Texas is concerned at the present time, to go back to answer the question I had answered previously, I think that particular feeling has changed considerably in rural areas of East Texas, and, after all, East Texas is rural.

There are no big cities in East Texas. We are talking about Tyler and Longview, but they are not very big cities; but that is my feeling about it at the present time. You see, I am not a sociologist or anything.

I don't qualify as a sociologist, and I am in a field that I am unqualified in, and when this is read to the Court, it will probably be objected to, but I am just doing the best I can to try to answer the question.

Q That's all.

CROSS EXAMINATION

Q Questioned by Mr. [Name], [Name] is a [Name] from San Antonio--

A I didn't get your last name, sir.

Q Name, I was about to ask you to reveal a [Name]

A Yes, sir.

Q And I represent [Name] and others.

A Yes, sir.

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1 Q Mr. Archer is the Republican Chairman in Lamar County.

2 A I have met him, yes, sir.

3 Q While we filed our complaint on both the House and
4 the Senate, I believe that we have beaten this House
5 situation pretty thoroughly, and I know we are all
6 getting tired, and I will try to make mine as short as
7 I can.

8 A Mr. Eason, I will give you as much time as I did the
9 others. I am feeling good right now.

10 Q Thank you, sir, but I will confine most of my inter-
11 rogation in regard to the Senate.

12 A All right, sir.

13 Q Now, in order to capsule some of the former testimony,
14 as I understand, you did use certain guidelines where-
15 by you tried to make these districts contiguous and
16 compact, and also that you weighed the ethnic and
17 the political and racial -- I don't know that you
18 testified that you did political, but the ethnic and
19 racial segments, along with the rest of it, in order
20 to make it reasonable, fair and equal representation;
21 is this correct?

22 A Yes, sir; and I did mention the political.

23 Q Did you?

24 A Yes, sir.

25 Q I was going to get into that.

A: Yes, sir, I did that earlier, when we first started this morning, and they were not interested in that, and it hasn't come back up since.

Q: Since I represent a political entity here, well, naturally, I am interested in that, and also you were guided by the community of interests and local problems aspect of it. General, I am going to hand you a Texas Senate District map, which I believe came from either your office or the Secretary of State's Office, or Mr. Johnson's office.

A: I believe this looks to be the product of Mr. Johnson. I am not certain, but it looks that way to me, sir.

Q: Now, Mr. Martin -- General Martin --

A: That's all right.

Q: -- I am primarily concerned with District 21, Senatorial District 21, and if you will refresh your memory as to that -- and, of course, Bexar County is divided into Districts 19, 20 and a portion of District 21.

A: Correct, sir.

Q: Also, I know you are more familiar, probably, with Dallas County and other areas where you formerly resided and campaigned, at least more extensively than you have in Bexar?

1 A That's right.

2 Q You are also familiar, I suppose, with the north and
3 the northeast part of Bexar County as to the political
4 aspects there?

5 A I am pretty familiar with the north part of Bexar
6 County, because I have -- I visit friends and things
7 there, but the northeast part, I am not as familiar
8 as I should be, and the south, I have a -- well, it
9 is just not -- I am not an expert on it. I can
10 generally have a general idea of it as a state official,
11 but I don't have a close judgment of it.

12 Q Well, are you aware that the northeast part of San
13 Antonio has a Republican justice of the peace and
14 a Republican county commissioner, and it is very
15 conservative, and a very strong Republican area; are
16 you familiar with that?

17 A No, sir, I'll be honest with you, I didn't know -- I
18 knew that there was a Republican -- it seems like to
19 me it was a Republican county commissioner, ---

20 Q Yes, sir.

21 A --- and there was a -- I met him, and he seems like
22 a very fine gentleman, and there is a -- the part of
23 the county is Conservative in the north part of it.

24 Q Yes, sir. Alamo Heights, Terrell Hills, Olmos Park?

25 A Well, I would have a pretty good knowledge of Olmos

1 Furt, because we have had some litigation there, and
2 I am acquainted pretty well with Olmos Furt, ---

3 Q Yes, sir.

4 A --- on account of that highway situation we have in
5 there.

6 Q Yes, sir. Still have. And this is a very strong
7 Republican stronghold?

8 A I would certainly agree with you on the part that Olmos
9 Furt is a Republican stronghold, yes, sir.

10 Q Do you know Bob Strickland?

11 A I know him -- the Bob Strickland, you are talking
12 about, that used to be in the Legislature?

13 Q Yes, sir.

14 A Yes, sir.

15 Q He is our Republican J.P. out there.

16 A Well, I have known him. He used to be a Democrat when
17 he was in the Legislature.

18 Q Yes, I know that, too.

19 A I have known most of the Representatives you have had
20 through the years. One of my closest friends, of
21 course, was the Senator from down there.

22 Q Oxley Lattimer?

23 A Oxley Lattimer died.

24 Q I went to his funeral here about six weeks ago.

25 A That's right. A fine man.

1 Q Yes, sir. General, looking at this map, do you
2 consider Senatorial District 21 as being contiguous
3 and compact?

4 A One thing I could say, San Antonio has always pre-
5 sented a unique problem. In the Senate, I was on the
6 Senate Committee that reapportioned the Senate in
7 1951, and also in 1961, and both of these -- this is
8 about the same result that was achieved at that time,
9 and in my opinion, that is about as compact as you
10 can get it. I realize that it is -- it looks that
11 way, but on account of this situation that Texas has
12 in Senatorial Districts, you will notice that you
13 have to have one long, narrow district. This one
14 happened to be a little wider than usual, because
15 it used to run all the way from Dallas. The Con-
16 gressional Districts have to be the same way, because
17 your population runs this way. The population runs
18 this way, and that is the result that has been
19 achieved in -- nearly every time anybody has tried to
20 figure it. I am not saying it can't be done, but to me
21 that is about as compact as you can get it.

22 Q In other words, let me ask you this: Do you feel
23 that there is a common interest between the north-
24 eastern part of San Antonio and the people in Starr,
25 Jim Hogg, Zapata and Duval Counties?

A I would say that there is quite a bit of interest, because quite a few of these people have ranches and live in San Antonio, and go out there, and it is a -- in other words, that is the area they come to when they come to San Antonio, and the immigrants into San Antonio from that area is terrific. I don't know how many; I have no figures on it, but I do know that they are the same type of people that I would -- and I am just giving you my best knowledge of it -- the same type of people that you have in the ranching areas in there.

Q And you are specifically referring to the northeast part of San Antonio, rather than the southern part?

A Oh, yes, I am talking about the northeast part. Those ranchers move in there and -- get a little old and retire and come off the ranch and that's where they move to, most of them.

Q Well, of course, we could go on and on about how this could have been done, but wouldn't the same thing be true of the people of Kinble, Gillespie, Comal and counties up there immediately north of there, and much more compact, and really more contiguous than when you go completely around the jurisdictions, to make this contiguous, this same thing would be true of the common interests, and would be more so for the

people of Comal, Kimble and Gillespie, wouldn't it?

A Well, to some extent, you have more of a German influence in those counties, and they are more German-type people. While the San Antonio area itself was dominated by the German people, that's not true to much extent. Most of the streets are named German, but the German people don't dominate San Antonio.

Q In other words, it is your testimony, then, that you figured that that was as contiguous and compact a district as you could have made in that area?

A Well, you have to take that in connection with the rest of the State. I am not saying it couldn't be improved on at all. I am just saying that as a whole, when you take the whole map, in trying to fit it all in together, it was as good as I could do. I'll put it that way.

Q But you are speaking of the whole State of Texas. You are not speaking of just the San Antonio area?

A Yes, sir, that's right, but it's just like a row of dominoes; you have got to have them all fit together; just like a jigsaw puzzle, it has got to fit together, and these counties have to go somewhere, and that was-- the Commission, what they came up with, and I signed the report, and I stand by it. I think it is about as good as we could do.

Q Speaking of that, I believe that you and Governor

1 Barnes and Calvert were the ones that approved the
2 Senatorial report; is this correct?

3 A Yes, sir.

4 Q Did any of the other members of the Board, or the
5 Commission, offer dissent regarding Senatorial
6 District 21, if you recall?

7 A Mr. Mutsaers, as far as I can remember, offered no
8 dissent, and I did not -- his vote -- his refusal to
9 sign the report was a surprise to me, and I think
10 I related here this morning, as far as Armstrong was
11 concerned, I didn't know that he was unhappy with
12 several of the things in the report until he came
13 to my office the morning, or the day that it was
14 finally signed, and I do not recall him mentioning
15 San Antonio specifically, and, as far as I know, Mr.
16 Armstrong didn't mention it to me. I can't recall
17 that he did. I am not saying he did. I don't recall
18 it, if he did.

19 Q Do you recall whether or not there were alternate
20 plans submitted concerning this district down here?
21 When I say "this district," I mean 21 and 19 and 26.

22 A There were some alternate plans submitted, but, to
23 be honest with you, nearly all of the plans that were
24 submitted that were brought to my attention, they
25 undertook -- and when I say "they," I mean those who

presented it, so you will know who I am talking about, undertook to try to work out Bexar County as just a complete unit, and the plans that were submitted, the Commission didn't see fit to buy them, and they didn't fit in with the rest of the State. That's the best I can tell you on it. They just didn't fit in with the rest of it, and this was one of our -- I guess one of the most time-consuming factors we had, was the Representatives and Senators, and we were talking about the Senate at this time, so we will confine it to that -- Senators coming in either with a plan all worked out how it would take care of their Senatorial District, and then I would say, "Well, what about -- how are you going to fit this in here with this other, this area right over here?" And they would say, "Well, that's your problem. That's your problem. That's your problem. I want my District this way," and that was the way Bexar County was done, and the same result. It was not changed -- let me say this: The plans that were submitted to us were not as drastic a change as it was in some Senatorial Districts, as to what the Senators themselves or some of the other people that brought plans in here, as what they had provided.

Q Now, along that vein, Senator Bernal's and Senator

1 Kothmann's weren't changed radically at all, were
2 they?

3 A. Let me say this, that they were not changed -- when
4 you use the word "radically," that is a relative
5 term. Senator Bernal, after it was over with,
6 expressed to me that we had ruined him. I don't know
7 whether he approves of it or not. Mr. Kothmann, I
8 have never heard him say one way or the other.

9 Q. Well, as a matter of fact, didn't you have certain
10 correspondence, and were actually approached by
11 certain people concerning both Senator Bernal and
12 Senator Kothmann?

13 A. Yes, sir, I had several people discuss the Bexar
14 County Senatorial situation with me. Yes, sir, I
15 sure did.

16 Q. And is it your testimony, then, that Senator Bernal
17 is not pleased with this?

18 A. To the best of my knowledge at the present time, he
19 was not. I don't know. I shouldn't say that. He has
20 not expressed himself to me one way or the other, but
21 I just heard by the grapevine that he didn't like
22 the way his district was put together.

23 Q. Senator Connolly was, of course, the Senator from the
24 "Down Under" District, most of which would now be 21?

25 A. Yes, sir.

1 Q And he is not running for the Senate any more, as I
2 understand?

3 A No, sir. If there was a letter came from him, I don't
4 recall it, and I know he never did speak to me person-
5 ally about it, or anybody in his behalf. As far as I
6 know, he took a hands-off attitude about the Senatorial
7 District down there.

8 Q Back to your testimony this morning concerning Dallas
9 County, as I recall, you used the words that you based
10 your decision -- this really hasn't got an awful lot
11 to do with it, but you did use the words "based on
12 the voting record and fairness," by winding up with
13 a multi-member district, and you thought it was fair?

14 A Yes, sir.

15 Q And based on the voting records, you thought it was
16 fair. Now, let me ask you this: Did you examine the
17 voting records of Northeast Bexar County, North Bexar
18 County, Northeast San Antonio, prior to the approval
19 of the plan?

20 A I can't say I did. I do remember looking at the voting
21 record of Bexar County as a whole, but I don't -- no,
22 I can't tell you that I looked at any particular seg-
23 ment of it. I am sorry, sir. I just did not.

24 Q Well, I don't want to use the word "gerrymandering,"
25 but this obviously goes around the two districts we

discussed of Senators Ketchum and Bernal, to do a
 fist-bump in here and take in this particular voting
 stronghold of the Republicans. It would appear to me
 that if anyone looked at the voting records, that
 they very conscientiously or arbitrarily grouped the
 Republicans of Bexar County with the Mesquite Tree
 Jurisdiction from Starr County southward, to cover
 Duval, Jim Hogg, Webb, McMillan, et cetera, which I
 can't see have any common interest other than, as you
 pointed out, the possible migration of ranch people
 into the San Antonio area, which, of course, I admit
 took place, not only from this direction, but from
 the various other directions; but it would appear
 to me that the dilution of the voting of my clients
 and the very Conservative Democrats and the Republi-
 cans in that area has certainly been brought about
 by this Senatorial District 21, but it is your
 testimony that under all of the facts that you had
 present before you at this time, that this was the --
 I don't want to put words in your mouth -- but, maybe
 not the best possible, but the best map or plan that
 you could have gotten together at this time?

A You have testified here for about five minutes, and
 the only thing I can say is, to try to comment on it,
 would be that it was not the intention of me, nor do

1 I have any knowledge that it was the intention of
2 any other member of the Commission to be unfair or
3 to treat a political minority in an unfair method,
4 and, to be honest with you, until you presented it to
5 me here then, I had not been aware that any of the
6 people felt that way about it, and I don't -- I really
7 disagree with the facts about the matter, sir.

8 Q In other words, you --

9 A I am not mad at you about it; I am just saying the
10 facts don't appear to be exactly the way you put
11 them.

12 Q Well, perhaps I am in error.

13 A Well, I am not saying I am perfect, but I am just
14 saying that you are asking me for an opinion, and I
15 am doing the best I can to give you my opinion,
16 and that was my opinion, that I think that Bexar
17 County as a whole was treated fairly.

18 Q Let me back up just a moment, please.

19 A All right.

20 Q Were you aware that the northeast section of San
21 Antonio or northern section of Bexar County was
22 heavily Republican, as compared with the balance of
23 Bexar County?

24 A Well, I was not aware that they are Republican. They
25 vote for -- part of them vote for Mr. Fisher, who is

Q A Democrat, and the only thing I can say is that I was aware that they are -- have a Conservative voting record. As to the party affiliation, I am not that well acquainted with Bexar County as to the positions and who the chairmen are and how they vote, and I am just not that well acquainted with it. I am sorry I am not, but I am just not.

Q Did you have any correspondence or any approaches from any witnesses or people that testified or appeared before you concerning the different alignments for Bexar County District 21?

A I don't recall any right now. I am sorry, sir. I am not saying those weren't; I just don't recall right

Q And it is your recollection at this time that Senator Bernal was quite disturbed about this?

A Oh, he did not come to see me, but he had one or two people come to see me, and that he was disturbed about it, and that's the extent of the thing. Mr. Bernal, as I -- if he has talked to me about the matter -- well, I am certain he did not. I don't recall ever having a conversation with Mr. Bernal at all, and the information that I received that he was unhappy with his district now, whether that is true or false, I don't know. I am just telling you

that's what I have heard. He has not told me that.

Q Do you recall whether or not you have had correspondence from various people in San Antonio asking you in your considerations to try not to disturb the Senatorial District of Senator Bernal and Senator Kothmann?

A I can remember receiving correspondence, I believe, from both of them. I think I received more correspondence from Mr. Bernal's friends than I did Mr. Kothmann's friends. Now, Mr. Kothmann -- you didn't ask me, but I will volunteer to tell you Mr. Kothmann did talk to me about his district, and he wanted the lines somewhat different from what they were drawn, but ---

Q Along the line of protecting his then present District; would that be a fair statement?

A I am sure he was after his own self-preservation. I don't think he was trying to hurt himself, but that was a -- I don't -- for the life of me, I couldn't tell you what -- how he wanted it changed. I really don't know. I couldn't tell you right now, but I know that Mr. Kothmann did talk to me about the matter, and he visited me about that particular matter, and he named some streets and things like that, which did not mean too much to me, and visited, I would say, three to five minutes about the matter, and that is the only

visit I had from him. I think -- and the record would show -- and I think I received some letters in his behalf from people from Bower County, but I am not real certain about that.

Q Did anyone, if you recall, --

A Uh-huh.

Q -- make the suggestion or came up with the plan wherein Bower County and North San Antonio would be combined with the Lower South Texas counties?

A To be honest with you, I do not recall anybody presenting a plan that -- it could have been -- I am saying -- I am just doing it from my memory, and I want the record to show I don't have anything in front of me, I am just doing it from memory. I don't recall receiving that type of a map. I may have received such, but I do not recall it. If I did, my attention was not called to that particular section of Texas, is the only thing I can say.

Q One further question, General. I will ask the more. State, if you recall, who drew the lines concerning District II that incorporated this portion of Bower County with this.

A The only thing I could say, that the staff drew the lines in. They were drawn approximately the way you see them there the first time that I saw the map. Now,

let me back up and say the original maps, as they were first started, left out the major cities, the four major cities. They did not include them. Then they put Tarrant County in pretty soon, because Tarrant County, if my memory serves me correctly, came out pretty well even, with two Senators, and so they just put it in, and it was drawn.

Q Just draw a line?

A Yes, it is my recollection their population just fit, and so Tarrant County was laid aside, and then the other three counties, at the various stages of working on them, they were gradually drawn in; and I could not tell you who actually physically put the lines in as to Bexar County; I don't have that information. If I did, I would be glad to tell you.

Q All right. When you say "the staff," to whom -- are you referring to Mr. Johnson's office, or are you referring to Mr. Spellings?

A Right; Spellings.

Q When you say "the staff"---

A No, I don't know which one of those it was that did that. The map that was brought to my office was brought by Mr. Spellings. Whether or not he drew it, I do not know.

Q When you say "the staff," you are referring to Mr.---

1 A: I am referring to the auxiliary people who helped us
2 with the drawing of the lines and --

3 Q: That is Mr. Spellings and --

4 A: And Mr. Bob Johnson and Mr. Foster, and I believe they
5 had a young fellow by the name of Hecker, who was
6 really the best man, when I was working with them,
7 he was the best man on the adding machine and
8 computer of anybody.

9 Q: Thank you.

10 A: Anyone else?

CROSS EXAMINATION

12 Questions by Mr. Greenberg:

13 Q: General, my name is Robert Greenberg. I represent
14 the Plaintiffs in the Hyatt case in Dallas. Would
15 it be correct to say, sir, that the guidelines and
16 the basis that you, as a member of the Redistricting
17 Commission, used to finally approve or sign the House
18 Plan that was signed was used as to all of the coun-
19 ties in the State, all of the guidelines were followed
20 the same way -- and I am now including the counties,
21 like Tarrant, and counties that have not previously
22 been mentioned; would that be a fair statement?

23 A: Yes, sir, it was our instructions and my understand-
24 ing, and I believe it today, that the same guidelines
25

1 were used for all of the legislative districts, and
2 I can go back and repeat them, but I have repeated
3 them several times.

4 Q No, no.

5 A These guidelines were used, and it was -- to my
6 knowledge, I didn't know of any deviation from them,
7 and when we got through, each member of my staff
8 agreed that the guidelines had been in their minds,
9 and they were satisfied with it.

10 Q Thank you.

11
12 **CROSS EXAMINATION**

13 Questions by Mr. Luna:

14 Q General, my name is Earl Luna, and I have just a few
15 questions I would like to ask.

16 A All right.

17 Q I represent Roy Orr, Chairman of the State Democratic
18 Executive Committee. In drawing the lines for the
19 House of Representatives, or the Senate, for that
20 matter, General, was there any intention on the part
21 of any member of that Board to inflict any discrimi-
22 nation against any group, or cast favoritism toward
23 any group?

24 A No, sir. The staff was specifically instructed
25 otherwise. That was one thing I wanted strictly

1 understood, that the -- if there was anything
2 punitive in this bill, it was certainly unintentional,
3 because it was not my intention to penalize anybody
4 or be punitive to anybody.

5 Q Since the bill was drawn up, you have had a number of
6 weeks to reflect on it and reconsider it?

7 A Yes, sir.

8 Q Having reflected on it and reconsidered it, are you
9 still of the opinion that the bill not only was not
10 intentionally drawn, but does not result in any
11 discrimination or favoritism toward any group, but,
12 on the other hand, is a fair and impartial bill?

13 A Yes, sir, I will agree with that. I may have received
14 one or two letters of complaint, and I have not --
15 again, I haven't gone through -- these other gentlemen
16 had the privilege, but I haven't -- in other words,
17 there has been no protest mail come to my desk about
18 the matter, and neither have I been approached by
19 people grabbing hold of my lapels and giving me the
20 mischief about the matter, and I can't account for
21 that except to say that they either -- well, I just
22 don't know. That's the best I can do, is just give
23 you the facts.

24 Q Now, you used the term this morning that political
25 considerations were used in drawing it. By that, did

you mean that these are lines for political offices and, therefore, it has to be politically fair to all persons?

A That was the way I used the word, and I hope I did not say this -- the use of the word "political" to mean that I was trying to gain advantage or some group gain an advantage over another group.

Q Political fairness, in other words?

A That's right. I was using the language of the Chavez case when I used that, in just -- in a thing of this sort the ultimate decision on quite a few matters has to be what we call political decisions, and that was what I was using it, in that particular sense; but it was a -- which is, in effect, most of the reapportionment bills are of that kind, yes, sir.

Q Now, General, if you draw a bill, if you just had to consider one county -- if, for instance, Dallas County, the way it is broken up into single-member Senatorial Districts, if you only had to consider that county, you could get them a whole lot more compact and square, or round, than if you had to consider the whole State, could you not?

A Yes, sir; and then if the Census Bureau -- and this probably is not exactly responsive to your question, but I wanted you to know -- if the Census Bureau,

since they are a dominant feature of this whole thing, if they would take more pains to create better census tracts, it would help us a whole lot. When you create a census tract with more population, and you have got another census tract next to it with 13,500 population, and they are all in different kinds of shapes and forms, it is sort of like trying to build a house out of irregular-shaped rocks, and it is hard to do.

Q There is no particular form used by the Census Bureau in forming the census tracts?

A If I might just say so, I would say it makes no sense, the form of some of the census tracts.

Q Very irregular?

A Yes, sir. I guess there must be some reason, but I don't know what it is.

Q When you need to add some more population to a district, the only way you can do it is by taking these irregular census tracts, and adding it on like that?

A That's what makes it difficult. You put your finger right on it. That's what makes it difficult.

Q That's all.

MR. CHAMBERLAIN: May I reserve mine until the time of trial?

MR. McDaniel: That's what I am going to

do.

Crawford C. Martin

SUBSCRIBED AND SWORN TO BEFORE ME on this

the _____ day of _____, 1972.

**Notary Public in and for Travis
County, Texas**

001

REPORTER'S CERTIFICATE

THE STATE OF TEXAS }

COUNTY OF TRAVIS }

I, Harry L. Hark, a Notary Public duly commissioned and qualified in and for the County of Travis and State of Texas, do hereby certify that, pursuant to notice, there came before me on the 27th day of December, 1971, at the Supreme Court Building of the State of Texas, in the City of Austin, Travis County, Texas, the following named person, to-wit, CRAWFORD C. MARTIN, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath, and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness, and that the said deposition was thereafter to be submitted to the said witness to be by him carefully read over and subscribed and sworn to before any Notary Public, and thereafter returned into Court.

I further certify that I am neither attorney or counsel for, or related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee

REPORTER'S CERTIFICATE - (Cont'd)

of any attorney or counsel employed by the parties
hereto, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my notarial seal, this _____ day of
_____, 1972.

Harry L. Wear,
Notary Public in and for
Travis County, Texas

My commission expires June 1, 1973.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL., Plaintiffs,

VS.

BEN BARNES, ET AL.,

Defendants.

A-71-CA-143

DIANA REGESTER, ET AL.,

Plaintiffs,

VS.

BOB BULLOCK, ET

Defendants.

NO. A-71-CA-143

JOHNNY MARRIOTT, ET AL.,

Plaintiffs,

VS.

PRESTON SMITH, ET AL.,

Defendants.

NO. A-71-CA-144

VAN HENRY ARCHER, JR.,

Plaintiff,

VS.

PRESTON SMITH, ET AL.,

Defendants.

NO. A-71-CA-145

APPEARANCES:

STUART MELKIN, Esquire, and
DAVID BERG, Esquire,
Appearing for Curtis Graves, et al;

DAVID R. RICHARDS, Esquire,
Appearing for Diana Regester, et al;

ROBERT M. GREENBERG, Esquire,
Appearing for Johnny Marriott, et al;

1 MICKEY McGUIRE, Esquire, and
 2 NATHAN W. RASON, Esquire,
 Appearing for Van Henry Archer, Jr.:

3 WALTER IRVIN, Esquire, and
 4 CLEO STEBLE, Esquire,
 Appearing for Intervenor Washington,
 et al, in Tyler Case;

5 E. BRICE CUNNINGHAM, Esquire,
 6 Appearing for Intervenor Conrad, et al;

7 ED IDAR, JR., Esquire,
 Appearing for Intervenor in Tyler Case;

8 SAM McDANIEL, Esquire, and
 9 AL CURRY, Esquire,
 Appearing for Defendants;

10 EARL LINA, Esquire,
 11 Appearing for Defendant Orr.

12

13 DEPOSITION upon oral examination, of the
 14 witness, BOB ARMSTRONG, taken on behalf of the Plaintiffs,
 15 in the above entitled causes, wherein the above mentioned
 16 persons are the Plaintiffs, and the above mentioned persons
 17 are the Defendants, pending in the United States District
 18 Court, for the Western District of Texas, Austin Division,
 19 before JACK D. SYKES, a Notary Public in and for Travis
 20 County, Texas, on the 28th day of December, A.D. 1971, in
 21 the Supreme Court Building, Attorney General's Offices,
 22 Austin, Travis County, Texas, between the hours of 3:45
 23 o'clock P.M. and 6:00 o'clock P.M., pursuant to the
 24 following agreement of counsel:

1 MR. RICHARDS: I don't know whether Sam
2 wanted to treat it just by notice or whether you wanted
3 it.

4 MR. McDaniel: I have no objection to
5 treating it as if it were taken by notice, and my only
6 thinking is, I do want -- I am not going to waive
7 signature on them. Other than that, why, we can agree
8 that it can be used and that you can reserve your
9 objections until the time of trial, as far as I am
10 concerned.

11 MR. RICHARDS: All right. And no way --
12 Do I understand that we are all in agreement that we
13 will waive the provisions of the Federal Rules that
14 require the witness to be available in order to use the
15 deposition, that the deposition may be used -- that we
16 will waive the provisions of the Federal Rules that
17 require the witness to be unavailable in order to use
18 this deposition, and that this deposition may be used
19 as testimony either before the Court or before the
20 Master; is that correct, without proving the witness'
21 unavailability?

22 MR. McDaniel: I have no objection to
23 that, although I don't want that stipulation to indicate
24 that I am agreeing to present the witness' testimony
25 strictly by deposition.

1 MR. RICHARDS: I understand. You are not
2 waiving the right to call him as a witness.

3 MR. McDANIEL: That is correct.

4 MR. LUMA: For the State Chairman, we do
5 not waive our right to cross examine the witness at the
6 trial, and in the event he should not be available at
7 trial, we do not waive the use of this -- if he is
8 available, but is not placed on the witness stand, we
9 don't waive our right to cross examine him at the trial.

10 MR. RICHARDS: Well, let me be sure I
11 understand. Suppose that the witness is not called as
12 a witness at the time of trial, what is your position
13 with respect to the use of this deposition at the time
14 of trial?

15 MR. LUMA: I reserve the right to examine
16 him in person.

17 MR. RICHARDS: Well, then, at least you
18 are on notice from me that it is going to be my position
19 that if you have questions to ask the witness, you had
20 better ask them today, because I will intend to offer
21 this deposition as evidence at the time of trial, and
22 you are here pursuant to notice, and at least you have
23 the opportunity to examine him, and it will be my
24 position, if you don't afford yourself that opportunity
25 today, that we will offer the deposition as firsthand

1 testimony. MR. LIMA: I understand.
2 MR. RICHARDS: All right. Sure.
3 MR. LIMA: I may ask him some questions
4 today, but I am simply not waiving any of my rights by
5 participating in this deposition that I don't
6 automatically waive thereby.
7 MR. RICHARDS: Is there anybody else who
8 has got a position, attorneys who are present who want
9 to put any position of record in the case?

10
11
12 BOB ARMSTRONG, a witness of lawful age,
13 being first duly sworn, on the above causes, testified on
14 his oath as follows:

15 DIRECT EXAMINATION

16 QUESTIONS BY MR. IDAR:

17 Q Please state your name for the record.

18 A My name is Bob Armstrong.

19 Q What is your official position?

20 A I am Commissioner of the Land Office.

21 Q I am Ed Idar, Mr. Armstrong, and I am an attorney for a
22 group of Mexican American Interlocutors in what is known
23 as the Regester case that was filed in Tyler contesting
24 the House Redistricting Plan that was approved by the
25 Legislative Redistricting Board of which you were a

1 number. We have people here, attorneys, representing
2 parties in three other lawsuits, some of which concern
3 the Senate and some the House, some of both. Most of
4 my questioning will be related to the House, since that
5 is the primary interest of the parties that I represent,
6 which is a group of Mexican American Interveners -- I
7 believe I stated that. How long have you been
8 Commissioner of Land, is that the official way to --

9 A Either Land Commissioner, is the short term. I was
10 sworn in on the 1st of January of this year.

11 Q What did you do prior to that?

12 A Prior to that I was a lawyer here in Austin and I was
13 a member of the House of Representatives.

14 Q How long did you serve in the House?

15 A For seven years.

16 Q What district did you represent?

17 A I represented Austin.

18 Q Travis County?

19 A Travis County and Burnet County.

20 Q Are you from Austin?

21 A Yes, sir.

22 Q All right. I would like to get right on to the meat
23 of this thing. As a member of the legislative
24 Redistricting Board, I think the Board had a couple of
25 public meetings dealing with House reapportionment and

1 apparently, from the testimony of one of the witnesses,
2 a number of private meetings -- or the meetings that
3 were closed to the public. Can you straighten us out
4 as to how many meetings were held as far as you know --
5 how many public meetings relating to the House
6 redistricting?

7 A I can remember two meetings in the old Supreme Court
8 room. I remember one meeting which was held in this
9 room, which was early, which was a meeting at which the
10 Attorney General gave us a report on the status of the
11 various lawsuits that were contesting our ability to
12 hear these suits. You may recall that several suits
13 were filed ahead of time.

14 Q Uh-huh.

15 A But I do not recall a private meeting at which the
16 Board met as a group that was not attended by the public.

17 Q Well, do you recall any private meetings that might
18 have been attended by more than two members of the
19 Board?

20 A None that I attended.

21 Q Did you know of any?

22 A I do not recall any meeting where I had any knowledge
23 that, say, four of them sat down together without me --
24 or three of them.

25 Q How many meetings of the Board did you yourself actually

attend?

A I attended all of the meetings that were called. I believe the first meeting General Martin was out of the State and there were only four members present, then there was another meeting which the Lt. Governor was out of town. And, then as I recall I believe there were two more where we had all five people there.

Q That was about four meetings, then?

A (Witness nods head)

Q In its deliberations, did the Board keep minutes of the various meetings that were held?

A There was a Court Reporter at, I believe, each of the meetings. And, I think the -- that Bob Johnson with the Legislative Council was charged with the responsibility for taking minutes.

Q Was that done at the first meeting of the Board where he was designated, you might say, secretary or something?

A I believe that is correct, yes.

Q Were you furnished with copies of all the minutes of the different Board meetings?

A As I recall, the minutes were fairly short and we approved the minutes after the meeting or at the next meeting that was held, but I -- and I looked at them at the time we approved them. I believe I got copies

1 of all of them but they were very perfunctory.

2 Q There would be only four meetings?

3 A That is correct.

4 Q As far as you know, these are the only four official
5 meetings at which the Board was authorized to take
6 official action?

7 A That is my understanding, unless there was one other
8 that -- But I am unsure -- not as to whether there
9 was a meeting but whether the number was four or five.

10 Q Would you be willing to make available to us copies of
11 the minutes of the Board that you have available?

12 A Certainly. If they are in my files I can get them.

13 Q You are not sure whether you have them?

14 A I don't remember the minutes. The minutes never, to
15 my recollection, had any significance. I think we did
16 pass a resolution at one of the meetings in order to
17 get into Court -- to let the Court tell us that we had
18 jurisdiction. But, other than that I don't think there
19 was anything other than just perfunctory language in
20 those minutes. It just said that we met, that we
21 considered such a plan and that we passed it or didn't,
22 but I never attached any significance to the minutes as
23 a record of either testimony or that sort of thing.

24 MR. CUMMINGHAM: Now, would you make the
25 minutes available to us?

1 MR. McDANIEL: Sure. I think that --

2 MR. CUNNINGHAM: They weren't in your
3 file.

4 MR. McDANIEL: No. I think they were
5 with the copies of the proceedings. This appears to
6 be a copy right here, Brice.

7 MR. CUNNINGHAM: Okay.

8 MR. IDAR CONTINUES:

9 Q Somebody has handed me a pamphlet or something that
10 appears to be the minutes of the Legislative
11 Redistricting Board of Texas for 1971. I wonder if
12 you would examine it.

13 A Sure.

14 Q And tell us whether or not that would incorporate all
15 of the official meetings that you know of.

16 A This appears to me to be accurate. It shows as many
17 as eight meetings; I do not remember that we had that
18 many.

19 Q Okay.

20 A Although I would stand to be corrected by those
21 minutes, because they seem to be an accurate reflection.
22 At some of the earlier meetings we just met and
23 adjourned without taking any action. I think --
24 Didn't we have two public hearings -- I understand --
25 on the bill?

1 Q Right.

2 A One on the Senate bills -- I remember those because
3 they seemed of more significance.

4 MR. IDAR: Mr. Reporter, would you mark
5 this, please?

6 (Plaintiffs' Exhibit No. 1 to
7 (the Armstrong deposition was
8 (marked for identification.

9 MR. IDAR: Do you have any objection?

10 MR. McDANIEL: Not at all.

11 MR. IDAR: We would like to mark it and
12 offer it and attach it.

13 MR. IDAR CONTINUES:

14 Q I don't want to take the time to read this at this time
15 unless it might be necessary later on. But, do you
16 recall -- You say most of these minutes are merely
17 perfunctory to the best of your knowledge?

18 A There was not, for instance, in the minutes an
19 incorporation of a transcript of all of the testimony
20 we heard. They basically, I think you will notice,
21 carried just a brief description of the motions, who
22 was elected, the one resolution we passed -- I think
23 then it just said things like "a plan was laid out and
24 voted on". They didn't, you know, say in the minutes
25 what the plan was and that kind of thing.

Q Okay. One of the things that we have been concerned with is this whole question of single member versus multi-member districting for the major counties in the State. As you would know, the Board determined to give Harris County single member districts but did not do so for the other major districts or areas, like Dallas or Bexar County or San Antonio or Nueces County or El Paso, and I think there is about 11 altogether. Do you recall whether the Board officially went into this issue? And, this obviously was going to be a policy decision that only the Board had the authority to make.

A (Witness nods head)

Q Can you give us the benefit of your experience in having sat through these different Board meetings as to what the discussions were on this point and how the issue was resolved?

A As I recall, I was the only person who discussed this matter in the Board meetings. I think it is important to look at this in -- from a point of view of time. The day that the case was made for single member districts there were only four members present, and as I recall there was a hearing prior to that which -- at which people testified both for and against the single member districts. But, there was never any discussion by the Board, other than a question and answer exercise

that I engaged in at the meeting next following the presentation for the single member district plan. At that time I asked General Martin, and there was some question about the legal ramifications of one county being multi-member and another county being single member. I then directed a question to Mr. Johnson as to whether or not in his judgement there was time for the staff to prepare a single member district plan, and I do not recall that the Board ever had any discussions in these meetings other than on my motion at that time with reference to these questions. Now, both of these questions were answered in a manner that did not give me much to go on. Frankly, I felt that the substance of the Attorney General's answer was that we could have single member and multi-member districts legally, but -- And, the answer, as I recall, from Mr. Johnson about the time was that they might be able to do it but it would be tough or something to that effect. Now, I think there is a transcript that will show the exact answers by both of them. But, I do not recall that we ever had any further discussions within a Board meeting other than to listen to the testimony and the questions and answers that were given.

Q Okay. Now, we have a transcript here of two hearings. These were two public hearings that the Board held;

1 these were both related to House reapportionment. The
2 first one appears to be a transcript of the meeting
3 held on September 30th; it was at this particular
4 meeting where you had Dick Reed and Bill Blythe, Joe
5 Allen, Bob Gammage, Fred Agnich, John Hill, Mike
6 Hopkins, Earl Luna -- Mr. Luna is here with us today --
7 and a number of other people appearing. The other
8 meeting was held on October 6th, and at that particular
9 time you had basically, I think, mostly Senator Maury
10 with a number of people that he brought with him --

11 A That is correct.

12 Q -- that we have been talking about.

13 A Yes, sir.

14 Q Now, was it -- you said that it was shortly after this
15 meeting of September 30th that you raised these two
16 questions about multi-members versus single member
17 districts?

18 A It was at the next regular meeting of the Board,
19 whatever the minutes show that date to have been, which
20 I suppose would have been after October 6th.

21 Q Let me see the minutes. Will you give us some help
22 here? I am trying to put this in context of time right
23 now, August 24th, September 10th, -- All right. We
24 have minutes here in this exhibit that has been
25 introduced reflecting that you all had a meeting on

September 30th. And, assuming that this purports to include all of the minutes of the Board, the next regular board meeting evidently was set on October 6th.

A I was under the impression that this transcript was October 6th. Am I right?

Q That is right.

A All right. Then, it would be the next one after -- the next one following that.

Q I see. Then, you raised the question after the second public meeting on House reapportionment?

A Yes.

Q Okay. The next meeting was October 15th?

A That is my recollection; that would have been when we talked about that.

Q Let me ask you this, you all knew by September 30th, obviously, since you had your first public hearing on reapportionment of the House, that you were going to be facing that issue. Was there some reason why the Board didn't bring this matter up earlier in the deliberation?

A Of course the matter had been discussed both in the press, and I am sure considered by the individual members of the Board all along, and it was my feeling both from my discussions with the Board members and from what I read that there was a split in how the

1 Board felt. My feeling at the time that the Maury
2 presentation was completed, and I so stated at that
3 time, was had the Lt. Governor been there at that time
4 to have had the benefit of the testimony and had he,
5 you know, been prepared to vote at that time that that
6 would have been the proper time to make the motions for
7 single member districts because you would have had time
8 then to draft the plan and you would have had the staff
9 available. Then we completed, I suppose, then the --
10 I am not sure in point of time whether we were through
11 with the Senate bill or not, but there was some feeling
12 that the Senate bill should be completed and then we
13 would get on to the House bill. And, the problem that
14 I had was that I didn't think I had the votes for single
15 member districts at the four-man meeting, because the
16 general consensus was there were two for it, two opposed
17 to it and one who wasn't sure. And, the Lt. Governor
18 would have been one of the votes for it, so if I had
19 made the motion at the time it would have been 2-2,
20 based on what I knew, so that time passed in point of
21 history. I wish we could have done it at that time,
22 at least gotten it up for a vote, because then had we
23 acted there would have been clearly time enough to do
24 it and at least we could have instructed the staff to
25 try to do it on that basis -- if that had been the

1 decision of the Board.

2 Q So, then, actually by inaction is what happened then;
3 the Board merely didn't act in time and that was the
4 time you wound up with single member districts, is that
5 it?

6 A I think it was a combination of --

7 Q I mean multi-member districts.

8 A I think this was a combination of time, I think it was
9 a combination of everybody's schedule and apparent
10 inability to all get together and do something in
11 concert.

12 Q Would you say that it was -- that the time factor was
13 significant in giving Harris County single member
14 districts?

15 A Could you make that a little clearer?

16 Q Well, I am wondering if because of the time factor,
17 the time at which the thing apparently was acted on by
18 the Board -- Let me see if I can rephrase this. Why
19 is it that in the light of the time factor, then, that
20 Harris County is the one that was selected for single
21 member districts?

22 A Well, I am not sure that I know why Harris County was
23 selected for single member districts. From my own
24 point of view, one of the things that made the House
25 bill palatable was at least you got single member

1 districts where, in theory, you needed them most, which
2 would have been in your largest county -- as far as the
3 one main argument that the bigger your county gets the
4 more isolated a House member becomes. And, so
5 consequently I felt that at least you put them where
6 you needed them the most there. But, we had suggestions
7 that there was going to be a plan which was going to be
8 drawn by the University of Texas at Arlington which
9 would eventually be submitted to us which would be for
10 our consideration which would have single member
11 districts throughout all the counties. That plan came
12 in two parts; the last part quietly. And, as I recall,
13 there were some obvious problems with that plan cutting
14 lines and one thing or another that seemed to raise
15 some legal objections to it. But, I think that there
16 was obviously time to do Harris County, but whether
17 there was time to do it all I could never get a clear
18 answer on from the -- from the staff people.

19 Q Do you know who actually did Harris County?

20 A I would assume that it was done by Mr. Spellings and
21 Mr. Hooser in the -- in conjunction with some of the
22 Attorney General's staff -- but that is a presumption.

23 I was not there when Harris County was done; it was
24 brought to me in a completed form.

25 Q Who brought it to you? Did they bring you Harris County

1 alone or the entire State plan?

2 A As I recall -- I can't recall whether I got the whole
3 thing at once. I think I got the whole State and then
4 Harris County, but it could have come together. I just
5 don't remember.

6 Q Do you recall the plan that was finally adopted by the
7 Board for the House?

8 A Yes.

9 Q Was that presented to you prior to the official Board
10 meeting at which it was adopted?

11 A Yes. It was presented to me some 48 hours, I would say,
12 prior to the time we had a Board meeting.

13 Q And, that incorporated single member districts for
14 Harris County but multi-member districts for the others?

15 A That is correct.

16 Q Now, who presented that particular plan to you?

17 A It was brought to my office, and I had a number of plans
18 brought to my office. I am not meaning to be evasive,
19 but I am nearly sure that it was brought to my office
20 either by someone from the Attorney General's office or
21 by Mr. Spellings, and I just don't know who brought it
22 over.

23 Q Do you know whether the Board, during its deliberations
24 at any time, laid any guidelines to the staff as to how
25 to go about drafting the House plan -- any guidelines

1 dealing with constitutionality and so forth?

2 A I do not remember that we ever passed a resolution
3 saying "do this in this manner" or that we gave
4 instructions. I think that it was presumed that you
5 would attempt to conform with the one-man vote rule.
6 I think it was presumed that you would follow the
7 decision in the -- for want of a better description --
8 I will say Judge Reavley's determination that you
9 should cut as few county lines as possible. And,
10 beyond that I do not recall that the staff was ever
11 instructed by the Board.

12 Q Do you recall any instructions by the Board of the
13 decision in the Chavez case by the United States
14 Supreme Court that came down, I believe, in June of
15 this year?

16 A None other than that I felt that it was the Attorney
17 General's feeling that the Chavez case was the law
18 and that we should follow the law.

19 Q Were you, as a Board member, apprised by the Attorney
20 General or anybody else as to the case law relating
21 to minorities when it comes to issues of redistricting?
22 I specifically have in mind the constitutional
23 guideline that redistricting plans must be drawn in
24 such a way as to not minimize or dilute or cancel out
25 the voting strength of minorities and significant

1 political elements?

2 A I am not sure whether I was ever advised of that or
3 whether I read that case, but I was aware personally
4 that that was the law.

5 Q Do you know whether the staff was instructed along
6 those -- along that line there on that constitutional
7 requirement?

8 A My only answer there would be that I didn't do it and
9 I do not recall that the Board did. But I knew that
10 certain members of the Attorney General's staff were
11 working on this, and I presume that they were working
12 within these boundaries -- or at least recognize that
13 this was a problem.

14 Q Do you know whether the staff -- I mean whether the
15 Board ever requested the staff to take this factor
16 into consideration in the various plans they were going
17 to be working -- or in drafting the House plan?

18 A No, I do not.

19 Q Was the staff ever requested to submit comparative
20 plans or alternate plans that would show what the
21 situation would be, say, for the Mexican American or
22 the Blacks in the major metropolitan areas under the
23 various plans that different people submitted to the
24 Board or that the staff was required to prepare?

25 A I am not sure about the Mexican American situation,

1 because it was my understanding that it was somewhat
2 difficult to obtain demographic information based on
3 Spanish surnames.

4 Q On the 1970 census, you mean?

5 A Now, I do know that I had available some demographic
6 data which showed a percentage of Black concentration
7 in the major cities. It was difficult to get the
8 information when you got much beyond Harris, Dallas,
9 Tarrant and that kind of thing, but -- for that sized
10 county. But, I think that the presumption of the Board
11 was that it would be done in a manner that was
12 constitutional. I don't think anybody felt compelled
13 to instruct; I just think they felt like if we did it
14 it had to be constitutional -- at least that was my
15 feeling.

16 Q Did you know that you did have census data available
17 for 1970 that would give you the breakdown by census
18 tracts as between Black and white, that that was
19 available to the Board?

20 A I believe that is true. And, I think I had that
21 information, as I pointed out, in the major counties.

22 Q Now, apparently that data was not available for the
23 1970 -- or for the 1970 census as it relates to the
24 Mexican American. However, do you know that the 1960
25 census did have demographic data that would have given

1 you the breakdown by census tract for the Mexican
2 American throughout the State, and certainly for the
3 major counties and cities?

4 A Based on the '60 census?

5 Q Yes.

6 A I would presume that to be true, that we could have,
7 yes, sir.

8 Q So, actually you all just assumed that the staff would
9 do its job and would follow constitutional guidelines,
10 but you made no special effort to be sure that the
11 staff would do that, as best you can reconstruct this
12 thing?

13 A I would say that was a fair statement -- and I think
14 a valid assumption. No one ever suggested that the
15 staff would try not to do this or would make an effort
16 to diminish the strength, but of course, this was one
17 of the problems that I had with the multi-member
18 district concept.

19 Q Apparently you favored a single member district?

20 A Yes.

21 Q And, what is your reasons for favoring those for the
22 major counties?

23 A I felt that the arguments that were made by the
24 proponents on balance were more compelling. I felt
25 that if you start with the basic proposition that the

1 lower House should be closer to the people that this
2 was one way to effect it. I thought that the cost
3 factor in a major city, the cost of a race -- I
4 believe the testimony was in a county the size of
5 Dallas just to write to your constituents would cost
6 something in excess of \$100,000. This then bred a
7 type of isolation on the part of the representative
8 when he becomes part of just a major group that is
9 out there somewhere representing you. I felt that
10 these arguments were more compelling than the arguments
11 on the other side about a continuity of interest or
12 the strength of the unified delegation. This happened
13 to be my opinion, and apparently it was not shared.

14 Q Was the Board concerned at all with the cost factor as
15 far as running and being elected to office in a House
16 race in the major counties like, say, Dallas with
17 1,300,000 and Bexar County with somewhere between
18 700,000 and 800,000; did the Board show any concern
19 in its deliberations?

20 A I think that there was no Board action other than to
21 listen to this testimony which was substantially as
22 you pointed out.

23 Q Did the Board request of the staff to furnish them with
24 any information as to the cost of campaigning for
25 Representative's seats in the major counties?

1 A I don't recall that request. I think that the testimony
2 pretty well outlined what the cost of campaigning was.

3 Q My only reason for asking that, some Board members have
4 testified -- at least one Board member I know testified
5 -- that apparently the testimony before the Board had
6 very little -- weighed very lightly, and I wondered if
7 the Board made any effort to try to verify this
8 testimony through the work of the staff.

9 A My only answer to that would be: I am not sure that the
10 people who testified were under oath, but most of the
11 people who testified were knowledgeable, had run races.
12 And, I don't know why anyone else wouldn't give them
13 full weight for their testimony, but I would have no --
14 I had no hesitancy to believe them.

15 Q You obviously, of course, have conducted at least one
16 statewide campaign in getting elected to -- as Land
17 Commissioner, and I presume that in connection with
18 that campaign you had occasion to visit all the major
19 cities in Texas and become somewhat familiar with those
20 cities?

21 A I would say that I have had some recency of experience
22 in that regard.

23 Q Are you familiar with San Antonio and Bexar County?

24 A To some degree.

25 Q Have you ever heard of the West Side in San Antonio?

1 A Yes, sir.

2 Q And, that is a pretty large geographical area there in
3 that city, is that right?

4 A Yes, sir.

5 Q And, that is where you have your rather heavy
6 concentration of Mexican Americans.

7 A That is correct.

8 Q Likewise, in Dallas you have some geographical areas
9 that are well known to be either Black or Mexican
10 American?

11 A Yes, sir.

12 Q Do you feel that you know enough about both of the
13 cities, for example, to hazard an opinion as to
14 whether -- assuming single member districts had been
15 allocated to those two areas -- whether or not that
16 would have served to increase the number of Mexican
17 Americans and Blacks that would have an opportunity to
18 be elected to the Texas Legislature?

19 A I would say, based on my experience, it would increase
20 the number of Representatives who would be Mexican
21 American and who would be Black, and I also add
22 Republicans.

23 Q Let me clear up another thing which I don't think I
24 have cleared up. You indicated earlier that at the time
25 you raised your concern about single member districts

1 before the Board that Mr. Johnson indicated that it was
2 going to be hard at that stage in time, that particular
3 period in time, to come up with single member districts
4 for the other major counties.

5 A That was the effect of his answers.

6 Q That it would be hard to come up with single member
7 districts?

8 A I had the impression that he was saying that it would
9 be hard, if not impossible. But, given the time that
10 was remaining --

11 Q Well, did he absolutely rule it out as a possibility?

12 A I do not recall. I think that -- I think that the
13 term that I remember that he used was that it would be
14 "tough".

15 Q But not impossible?

16 A I think the transcript of that meeting will show exactly
17 what he said, but that was my impression.

18 Q Mr. Johnson has testified that he has a staff of
19 somewhere between 50 and 60 people in the Texas
20 Legislative Council. Do you think it would have been
21 impossible to come up with a plan, single member district
22 plan, for every major county with that type of a staff
23 available?

24 A Let me answer that in light of my experience with this
25 Board, and start by saying that I did not conceive of

1 myself nor was I by any means an expert. I think that
2 this kind of thing requires a certain amount of
3 expertise. It is quite obvious when you are dealing
4 with this kind of thing that people who have done it
5 before, either at the staff level or, say, the people
6 who have been chairmen of the various Senate House
7 Redistricting Committees, are very able to perform
8 things that a newcomer does over a long period of time.
9 I have said before that it is like putting together a
10 puzzle; it is very complicated the first time and it
11 takes many hours, the second time it is easier and the
12 third time it is easier yet. I do not know how many
13 of Mr. Johnson's staff members are able in that -- and
14 experienced in that kind of task. But, I had to rely
15 to some degree on his judgement. For instance, I tried
16 at one time with my staff, which was very limited, to
17 work on this -- without success. It concerned me at
18 the enormity of the task.

19 Q Your staff didn't have the expertise?

20 A That became apparent as soon as we got into it.

21 Q However, the Legislative Redistricting Board had been
22 working on this considerably, both before the House and
23 Senate, during the regular session and they also worked
24 on this in '65, I believe, when they reapportioned
25 Texas -- both the House and Senate -- so they had a

1 certain amount of expertise.

2 A That is right.

3 Q Okay. I gather that -- Really, would it be fair to
4 say that what Mr. Johnson said was a large factor in
5 your own decision that maybe it was too late to insist
6 on single member and you went along with the plan
7 simply because you felt that was the best that could
8 be obtained under the time that existed?

9 A That was a part of it -- and a major part of it. I
10 said at the time that I would have preferred the single
11 member district and that if we did no more than to
12 formulate a plan with Harris County and the majority of
13 the State in single member districts that perhaps at
14 some subsequent time, using that as a basic plan, if
15 the law were such, that we had to have single member
16 districts, that some Court at some subsequent time
17 might be able to then fill out the remainder of these
18 cities -- if that was what they felt the law should be.

19 Q Okay. I just have one or two more questions and I am
20 going to turn it over to somebody else. You do
21 recognize the fact that both your Mexican American and
22 your Black face up to some rather serious problems in
23 Texas socially, economically, educationally and have
24 other problems as groups?

25 A I do.

1 Q And do you further recognize the fact that -- or is it
2 your feeling that they have up until now had their fair
3 share of representation in the Texas Legislature?

4 A I would say that, for whatever reason, that certainly
5 there is not a proportional numerical number of Mexican
6 Americans or Black Representatives in the Legislature.
7 Now, whether that is because of redistricting or some
8 other reason I don't think anyone can say with certainty,
9 but this was one of the reasons why I felt that single
10 member districts would be preferable.

11 Q Assuming that both of these minority groups, and it has
12 been testified to generally here, and you might agree
13 with me that the Mexican Americans constitute roughly
14 20 percent of the population and the Blacks somewhere
15 between 10 and 15 percent. Now, we are talking roughly
16 about 32 to 35 percent population of the State, or one-
17 third. Assuming that both of these groups do have
18 their proportional representation in the House and in
19 the Senate of Texas, and based on your experience as
20 a State politician now -- young one, maybe, but still
21 now at that level -- do you feel that adequate
22 representation for these two groups in the Legislature
23 would help bring to a focus, hopefully, some of the
24 solutions to some of the problems that are besetting
25 both of these population groups?

1 A That is a long question, but I would say: yes, I am
2 in general agreement with it.

3 MR. IDAR: Thank you.

4 CROSS EXAMINATION

5 QUESTIONS BY MR. BERG:

6 Q Commissioner Armstrong, I am David Berg and I represent
7 Curtis Graves of Harris County. Commissioner Armstrong,
8 I am concerned about when you first became familiar
9 with the map that I am now showing you of the new
10 Senatorial Districts of Harris County. At what point
11 was this map presented to you for the first time, sir?

12 A In point of time, the only thing I can remember is
13 that it reached me after all of the other Senate map
14 was completed, and I would say somewhere between 24 and
15 48 hours ahead of the time that we were to vote on the
16 Senate bill.

17 Q Now, was this presented to you as fait accompli as the
18 map that was going to be approved by the Commission?

19 A That it was already decided, you mean?

20 Q Yes.

21 A No. It was submitted to me as the final draft. The
22 only thing I can't remember is with reference to Senator
23 Schwartz' district. I cannot recall whether Senator
24 Schwartz had that corner carved out as part -- on the
25 map that I am looking at -- it has the number 17 on it.

1 But, other than that it was presented to me as the map
2 that we were to consider.

3 Q Commissioner, I am concerned about the basis upon which
4 it was decided to draw the map this way for the
5 Senatorial District. You were at all the meetings,
6 I believe you have testified.

7 A That is correct.

8 Q I take it there was some internal discussion with other
9 individual members of the Board or the Commission?

10 A There were phone calls from time to time, from my point
11 of view, mostly volunteering to be present whenever we
12 were going to work. I called the chairman from time
13 to time to outline my schedule and to say that I was
14 available. And, we did not discuss in any of those
15 meetings, as I recall, a lot of anything about how
16 lines would be drawn or that kind of thing; maybe a
17 conversation that "well, we have got it all done
18 except Harris and we will send it over for you to
19 look at when we get it done" and that kind of
20 conversation. But, we did not meet in twos or threes
21 except -- to draw lines -- except after this map was
22 presented.

23 Q Was there any discussion of the basis for drawing lines
24 or how Houston was to be divided in the Commission --
25 within the Commission -- either official or any

unofficial capacity -- or the Board, rather. Excuse me.

A There was not any discussion that I recall between any of the Board members and myself until after I received this map. After I received it I was concerned with it and I discussed it with some of the Board members.

Q Would you tell me which Board members you discussed it with?

A As I recall, I discussed it with the Lt. Governor and with the Attorney General.

Q What was the basis of your concern, Commissioner?

A Well, the original concern that I had with it concerned these three precincts which I will try to decipher.

Q Well, you are saying -- These are census tracts?

A I beg your pardon?

Q Let's see.

A And this is a small map.

Q I think that -- We will see if we can't make some sense with this larger map. Is that --

A That is 208, 207 and 206.

Q What was your primary concern about these areas?

A Well, they had primarily -- or I am sorry -- formerly been in Senator Jordan's district and they were what I considered to be part of the Black Core.

Q You are speaking -- Excuse me. I am sorry.

A And I felt that where you were changing an existing

1 district -- as I understood the law to be -- in a manner
2 such that you would run the risk of criticism, that
3 you were diluting the district of that core area, that
4 you had to be careful and that the effect of your line
5 drawing was not to dilute this voting strength. And,
6 my suggestion was that it might be more proper to leave
7 this, or these three census tracts, with the rest of
8 the core area rather than to leave it like it was
9 running over into River Oaks.

10 Q Now, when you mention "River Oaks" -- For the record,
11 you are familiar with Harris County to a certain extent,
12 are you not?

13 A Yes.

14 Q River Oaks is an oppulent, affluent -- one of the most
15 affluent in America; would you agree with that?

16 A I would agree with that.

17 Q Let's start with the basis, Commissioner, of whether
18 or not you consider that the precincts or the census
19 tracts that you have enumerated and that you were
20 concerned about really have any community of interest
21 with River Oaks.

22 A I have been in Houston and I have been in that area,
23 both areas, and I would say that certainly no economic
24 community of interest, no racial community of interest.
25 Although, in fairness let me point out there are, as I

1 recall, some members of the Black community who also
2 live in another part of this 15th District out on the --
3 I will have to ask your help -- is this Katy Road and
4 this is Hempstead Road?

5 Q Yes.

6 A All right. Then, out the Hempstead Highway, as I
7 understand it, there are some members of the Black
8 community.

9 Q Would it surprise you, Commissioner, to learn that
10 according to a 1970 map, property map, based on the
11 1960 census tracts, that you are talking about an area
12 of the city, the three areas you were talking about,
13 first, that concerned you, Black areas formerly in
14 Senator Jordan's district, are part of the poverty
15 pocket of Harris County, Texas?

16 A It does not surprise me.

17 Q You have seen it?

18 A Yes.

19 Q You have seen it and you know it is a ghetto area. So,
20 economically there could be no dovetailing with the
21 River Oaks type area that also exists in the new
22 District 15?

23 A That was my feeling at the time and is my feeling at
24 the present time.

25 Q Okay. When this was pointed out to the Lt. Governor --

1 we will take him first -- what was his response?

2 A Well, let me say first of all that I suggested a change,
3 and the change that I suggested was admittedly not
4 perfect but I thought it was better, without going into
5 detail, because I don't have the numbers. I suggested
6 that a three way change could be accomplished which
7 would in effect leave the Core connected, would add
8 an area to the southernmost part of District 15 out of
9 District 7 and then would add to District 7 a part of
10 District 11, which would make up for the portion that --
11 I am sorry -- which would even out so that you would
12 have a three way shift and leave the core intact and
13 add here and add in District 11 somewhat in this manner.

14 Q Before we go on to the response of Lt. Governor Barnes,
15 could you give us the basis of your decision or your,
16 I guess, rather hastily -- Well, strike that. Could
17 you give us the basis of your concern and what you
18 wanted to see accomplished by the suggested lines that
19 you gave to Lt. Governor Barnes and to whomever else
20 you may have given it to?

21 A I just thought it would leave the Core intact to a
22 greater degree and avoid the risk that we might run
23 of somebody saying "you were diluting not only the
24 strength of the Black community but also the Republicans
25 strength if those people were effected over in this area

1 Q And, in essence diluting any minority strength, whether
2 it be a Republican or a Black.

3 A That is correct.

4 Q What was the response of Lt. Governor Barnes?

5 A Well, his feeling was that in terms of percentages the
6 Blacks in the 11th District --

7 Q You are speaking of the new 11th District?

8 A That is correct. -- had a higher percentage of the
9 total population than Senator Jordan had had in her
10 district, and so consequently it would not make any
11 real difference as far as Black proportionate
12 representation was concerned; there would be just as
13 much chance of a Black being elected based on the facts
14 that Senator Jordan had prevailed.

15 Q Senator Jordan, who had run unopposed in the last race
16 in the last three races.

17 A I am not aware of that history.

18 Q Did you also take this to the AG, your objection, to
19 the AG?

20 A I took my proposed change, yes.

21 Q And what was his response?

22 A His response was substantially the same as the
23 Lt. Governor's, plus the fact that he felt that you
24 would be doing violence to the 11th District and make
25 it look less compact. And, I will admit that fault in

1 my amendment, because there was no way we could make
2 the numbers work and make it totally compact. It would
3 have run a gooseneck out into this southernmost area
4 of the 11th District. He also felt that it would be
5 isolating certain Blacks out the Hempstead Highway.

6 And that, as I recall, was the substance of his

7 a argument coupled with the argument that there was the
8 same percentage factor -- or rather the percentage
9 factor argument -- that the Lt. Governor had made.

10 Q So, part of his concern was that the district remain
11 contiguous and compact?

12 A And that my proposed amendment destroyed that
13 compactness.

14 Q Did he at that time make any explanation for the
15 contiguous and compact District No. 13 that goes all
16 the way around the city and looks like a horseshoe?

17 A No.

18 Q But it was a concern of his that your proposed change
19 might create a non-contiguous compact Senatorial District

20 A Yes. And, let me say in fairness, there is in my
21 judgement, at least, a tangible position in certain
22 cities that a circular district embodying all of the
23 communities, for instance, let's say, in Dallas County
24 where you have communities like Garland and DeSoto,
25 that perhaps there is more of a community of interest

1 around these, what I will call, fringe cities than
2 perhaps there would be in running a pie-shape into the
3 center of the city.

4 Q All right.

5 A What I am talking about is I don't think a horseshoe
6 or circular district is bad per se; you just have to
7 look at it --

8 Q Let's talk about our horseshoe for a minute.

9 A All right.

10 Q Are you aware there are -- Well, did any of the
11 testimony indicate to you a divergence of interest
12 from the residents of this pie-shaped district -- a
13 very strong divergence of interest politically?

14 A I would say that -- Oh, I don't know what you mean
15 by the word "testimony" other than that I can take --
16 Well, I have personal knowledge there is a divergence,
17 and I think this is an accurate statement.

18 Q So, in 13, which, -- the 13 which encircles the city
19 almost -- would you object to that, then, if I understand
20 correctly, because of the lack of political identity
21 within this particular group -- the lack of political
22 community of interest?

23 A I would object to it. But I would not object to it,
24 for instance, as strongly as I would to the severance
25 of the core; I think it is a clearer case there.

1 Q In other words, both Lt. Governor Barnes and the
2 Attorney General would not sacrifice -- Strike that
3 question. In making your -- in taking your new
4 proposals, Commissioner, to Lt. Governor Barnes and
5 the Attorney General, what other factors did you
6 consider? I know your prime concern was the core city
7 being diluted; what other consideration, if any, did
8 you have about that particular area -- or about any
9 area?

10 A I did not -- I was more worried about that than I
11 was about anything else; that was my paramount concern.

12 Q Did you indicate to the Lt. Governor, then, that
13 Blacks were not going to be represented under this
14 plan?

15 A I just felt that there was less chance for the core to
16 be represented. I do not recall indicating that to him.
17 I simply pointed out to him, and to Mr. Spellings,
18 that the effect of this plan -- and that in my judgement
19 the plan could be improved if we did it the way I
20 suggested. But, I think it was clear that this was
21 a problem -- the problem of lack of representation
22 there was.

23 Q Let's get into -- Let's take it one step beyond this
24 step, Commissioner. If the lines are left the way they
25 are, are you familiar enough with Harris County and

1 Harris County politics to speculate whether or not a
2 Black could be elected from any of those districts,
3 as an example?

4 A This would be the grossest kind of speculation, because
5 they are all two man races and it would depend on who
6 that Black was and who her or his opponent might be.
7 So, I would not say and couldn't say. No one can
8 firmly say that someone can't be elected, but I think
9 it is more -- in my judgement it was proper to leave
10 the core in, or as much of the core as possible, in a
11 district as you could. And, I felt that this was a
12 fairly clear severance of the core, which was one of
13 the reasons that I didn't sign the plan.

14 Q Why was that done?

15 A I beg your pardon?

16 Q Where was the core severed?

17 A I have no idea.

18 Q In talking with Lt. Governor Barnes, the Attorney
19 General, no one indicated to you why the plan was
20 drawn that way?

21 A No one suggested to me "we want to do it this way
22 because of this".

23 Q Who drew that map?

24 A It is my understanding that it was prepared by the
25 Senate staff and perhaps in conjunction with the

1 Attorney General's office, but I don't know that. You
2 will have to ask someone who does.

3 Q Do you know of your own personal knowledge whether or
4 not a Mr. Hooser had anything to do with that?

5 A I do not know anything, except Mr. Hooser was on the
6 Senate staff together with Mr. Spellings.

7 Q Was it your impression that they had the -- I know
8 you have testified before that at least in the House
9 maps you thought that they were done by Spellings and
10 Hooser, but you just -- You had no personal knowledge.
11 Is the same true with the Senatorial Districts; is that
12 your impression?

13 A Yes. The only thing I can tell you, we did not draw
14 lines in our office. Plans were submitted to us. It
15 is difficult for me to know, for instance, if someone
16 on the Attorney General's staff drew each line or part
17 of the lines or had suggestions, because I just don't
18 know. But, I know that the people who had the most
19 expertise and experience at the Senate staff level
20 were Mr. Hooser, who as I recall had been Committee
21 Clerk for the Senate Redistricting Committee, and a
22 Mr. Spellings. Then, I know that Mr. McDaniel worked
23 on -- from the Senate's point of view -- I am sorry --
24 from the Attorney General's point of view, and he may
25 be able to tell you the others who worked, but these

1 were the people who were all involved.

2 Q Do you remember if Hooser was at the meetings that you
3 attended, Mr. Armstrong?

4 A I do not remember his presence.

5 Q If you will, excuse me just one minute. I am going to
6 get this question straight.

7 MR. NELKIN: May I ask a question?

8 MR. McDANIEL: Sure.

9 CROSS EXAMINATION

10 QUESTIONS BY MR. NELKIN:

11 Q Commissioner Armstrong, we had talked about the desirability
12 in some cases of having the horseshoe district, and that
13 would be because of the community of interest. Now,
14 it is my understanding of your knowledge of Harris
15 County that there is not a community of interest in our
16 horseshoe, which is now District 13.

17 A I think that it is safe to say that the east edge of the
18 county is predominantly oriented toward industry while
19 the west end of the county is predominantly oriented
20 toward either residential or farming.

21 Q Okay. And, so that the fact that compactness was
22 sacrificed here wouldn't be in order to continue a
23 community of interest?

24 A Well, that is a fair statement except when you consider
25 the alternative. Let's say that you run pie-shapes

1 from the outside edge of the county into the center.
2 I am not sure that you are doing any better in terms
3 of compactness, for instance, to run part of the core
4 all the way out into the county. I mean, it is just a
5 hard judgement call to make. This may be the best you
6 can do with that outlying district. That was not my
7 major objection to the bill -- or to the plan.

8 RECROSS EXAMINATION

9 QUESTIONS BY MR. BERG:

10 Q Did you ever speak to Robert Calvert concerning this
11 particular map?

12 A No.

13 Q Did you ever speak to Gus Mutscher about the map?

14 A No.

15 Q Did Gus Mutscher play much of a part in the redistricting?

16 A He was present in the voting and he had some alternative
17 House plans to suggest.

18 Q Were you aware of Representative Graves' proposed plans
19 for Harris County in the Senate?

20 A I had a plan submitted to me at one time that, I believe
21 was his.

22 Q Did you have any particular objections to Curtis Graves'
23 plan or do you remember it?

24 A I have looked at so many Harris County plans it is
25 difficult for me to remember exactly what his looked like.

1 Several Harris County proposed plans were submitted,
2 and quite frankly I do not remember the effect. I do
3 remember that I looked at his plan in terms of what I
4 thought it did demographically. And, it, as I recall,
5 made almost a total core district which I would not
6 have objected to. I think --

7 Q Excuse me?

8 A Excuse me. I was going to add that I think that
9 Representative Braune also submitted a plan which was
10 substantially the same in its concept, which was that
11 you started with the basic core district and worked
12 out from there.

13 Q Commissioner, you didn't sign the bill, did you?

14 A No, sir. The Senate Plan I did not sign.

15 Q The objections that you have told us about today, were
16 those the basis of your refusal to sign?

17 A My basic objection was to Harris County. I had some
18 concern about other portions of the State, but I would
19 say this was my basic objection.

20 Q Were you aware of who drew the map for the new
21 Congressional seat, United States Congressional seat?

22 A No.

23 Q Are you familiar at all with the relationship of the
24 drawing of that map and the way the Senatorial lines
25 were drawn?

1 A No, sir. This is the first I have heard about any
2 possible connection.

3 Q There is no connection about the way the new
4 Congressional seat was drawn and the way the Black
5 vote has been diluted in Harris County?

6 A This is the first time I have heard any suggestion of
7 that. I did not follow the Legislature's Redistricting.
8 As far as I know I have never seen a Congressional map
9 of Harris County.

10 Q Was there ever any mention of the corporate income tax
11 during the period of time -- By the Commissioners or
12 people interested in the redistricting, was there a
13 mentioning of corporate income tax concerning the way
14 the Senate would be drawn?

15 A Not in my presence.

16 Q Would you speculate that part of the motivation for
17 drawing the map this way was to insure that the
18 corporate income tax would be defeating?

19 A That would be gross speculation, and I would not care
20 to.

21 Q Commissioner, we are concerned also that the wishes of
22 the parties whose advice was sought by other members
23 of the Board had a great deal to do with the way this
24 way was drawn, other than members of the Board. Do you
25 recall Commissioner Calvert talking about the way big

1 business wished the Senatorial Districts drawn?

2 A The only recollection I have was at some Board meeting
3 in, as I recall, the questions and answers that followed
4 Representative Graves' testimony there was some
5 mention made about business interest by Mr. Calvert,
6 but I do not recall that line of testimony. I think
7 it was just a comment that he made, that I think that
8 maybe the transcript of that meeting might show.

9 Q Do you feel that this particular map would reflect big
10 business' interest better than, say, the poor people
11 of Houston or the Blacks of Houston, which is pretty
12 much synonymous?

13 A Again, that is a matter of who is running. And, I just
14 I can't say much more about it other than it is obvious
15 in these three census tracts that you have severed an
16 area which, to me, does not have a community of
17 interest with the area that joins it in the district.
18 Now, obviously to me the effect of that is that the
19 people in that -- in these three census tracts would
20 have a hard time getting elected. Although, if you
21 followed this to its logical conclusion I represent
22 these people and these people, although my -- because
23 my district is statewide.

24 Q Yes, that is the difference.

25 A Yes.

1 Q Commissioner, you five men were charged with making
2 sure that representation -- or at least hopefully --
3 that representation in this State was fair, were you
4 not?

5 A That is correct.

6 Q In your dealings with the -- I suppose part of this
7 responsibility implies a certain sensitivity to the
8 minority groups of this state -- a sensitivity to all
9 groups of this state in drawing the maps? I suppose
10 that would be part of what was felt by your Board --
11 to be part of its duty -- to make sure those people
12 were represented fairly too, the minority groups.

13 A And not to guarantee representation as much as to
14 avoid dilution willfully or knowingly. I think the
15 Court spoke of this, and I am not sure if it is Chavez,
16 but it just said that, I believe, the term was "religious,
17 ethnic and political groups shouldn't have their
18 strength diluted willfully by the drawing of the lines
19 in a manner that would dilute the districts".

20 Q But, based on your knowledge and despite this particular
21 moral impairment, there was a known dilution? I mean,
22 everybody knew on that Board that there was a dilution
23 of the Black vote in Harris County, did they not, by
24 this new map?

25 A I think you would have to ask each one of us that. That

1 was the way I felt and that is why I didn't sign the
2 bill.

3 Q But, at the very minimum you pointed this out to at
4 least Ben Barnes and Crawford Martin that that was your
5 opinion?

6 A And, I suggested a solution, and their feeling was that
7 my solution was not substantially better than the bill.

8 Q They had access to the same racial makeup of the --
9 the same facts concerning the racial makeup of the
10 State that you did, is that correct?

11 A I presume so. Understand, I used my own data which I
12 prepared.

13 Q Well, I see what you are saying. But, Ben Barnes is
14 surely familiar with the makeup of Harris County, the
15 ethnic makeup of Harris County, is he not?

16 A Again, I think this would be a proper question for you
17 to ask Mr. Barnes.

18 Q I am not asking you to go in his head. I am sorry.
19 One last thing that concerns me. If we follow the
20 moral and heralded train of thought, did you personally
21 detect in the way minority group members were referred
22 to, for instance, as among the members of the Board?
23 Did you detect anything that you would consider
24 insensitivity of the needs or to these racial groups?

25 A Well, you are again asking me to go into somebody's

1 head. I think by and large there was an awareness of
2 the need to have some sensitivity or else you were
3 going to have constitutional problems.

4 Q And lawsuits?

5 A Yes.

6 MR. BERG: I think that is all we have.

7 MR. CUNNINGHAM: I just have a couple of
8 questions.

9 CROSS EXAMINATION

10 QUESTIONS BY MR. CUNNINGHAM:

11 Q Mr. Commissioner, my name is Brice Cunningham and I
12 represent George L. Allen, Van Holmes and Mr. Conrad,
13 and we are primarily concerned about the House
14 Redistricting Bill which I believe, first of all, you
15 did sign that bill?

16 A That is correct.

17 Q I mean sign that plan.

18 A That is correct.

19 Q Okay. And, I believe you are familiar with Dallas
20 County and the Black community?

21 A Perhaps to a lesser degree in Harris County, but that
22 is my fault because the state is too big. But, I am
23 familiar basically with it, yes.

24 Q Okay. And, I believe you have served in the House with
25 both Representative Lockridge, who is now deceased, and

1 Representative Ian Holmes.

2 A That is true, I have.

3 Q And, I believe that presented before the Redistricting
4 Board was testimony concerning the cost of running a
5 countywide race as against a single member race, is
6 that true?

7 A That is true.

8 Q Okay. In your opinion, based upon that testimony, do
9 you think that if a Black was not on the team that he
10 could be elected in a countywide race?

11 A Well, I don't mean to repeat myself over and over, but
12 I think it would depend upon who that man was and the
13 temper of the times. And, I would cite as an example
14 the fact that for the first time a Black was elected
15 to the City Council here in Austin in a citywide
16 election. But, I think that the number of Blacks who
17 have been elected throughout the State by comparison
18 to the number of Black voters in the State indicates
19 at some point there is a breakdown in the ability of
20 the Blacks to elect a proportionate number of people.
21 Now, whether this is because of the redistricting plan
22 or whatever, maybe money, maybe a lack of organization,
23 I don't know. But, I think everyone has to agree that
24 we have not elected a proportionate number.

25 Q And, probably my final question. If a single member

1 district plan had been adopted for Dallas County, Texas,
2 based upon the information you have, do you feel that
3 there would have been more than one Black elected to
4 the House?

5 A Yes.

6 Q Do you have any idea how many?

7 A I am not sure on the figures exactly, but I would guess
8 either three or four in terms of numbers.

9 MR. CUNNINGHAM: Okay.

10 (Whereupon, a recess was had
11 (at this time.

12 CROSS EXAMINATION

13 QUESTIONS BY MR. EASON:

14 Q Mr. Commissioner, I am Nathan Eason from San Antonio,
15 and I represent Van Henry Archer, Jr. and others, and
16 our suit encompasses both the House and Senate
17 Redistricting. Now, were you ever shown, or was it
18 ever submitted to you, a single member district plan
19 for Bexar County that you recall?

20 A My memory is not infallible, but I don't remember any
21 single member district plan for Bexar County, except
22 one that a staff member of mine prepared. Although,
23 as I recall, there may have been one submitted to the
24 Board rather than just to me.

25 Q Yes, sir. I am going to hand you a copy of a letter

1 addressed to Attorney General Crawford Martin dated
2 October 8, 1971, signed by Van Henry Archer, Jr., and
3 ask you if you have ever seen that letter.

4 A I could not recall seeing that letter. I must remind
5 you that I perhaps received -- have received 4,000 or
6 5,000 letters since I have been in office. I am not
7 saying as a certainty that I haven't; I could have but
8 I don't recall it.

9 Q I certainly understand that you had numerous
10 correspondence on this matter, but it does recite in
11 the letter that enclosed is a map of Bexar County
12 divided into single member districts.

13 A Yes.

14 Q And, of course, it is addressed to Attorney General
15 Crawford Martin and was not addressed to you. You have
16 stated today on the record that you are in favor of the
17 single member districts for the metropolitan areas, is
18 this correct?

19 A That is correct.

20 Q And, you feel that it would give a better religious,
21 ethnic, racial and political representation to the
22 individual voters of the various districts, is this
23 correct?

24 A I believe that would be true.

25 Q Now, is this the reason that you either refused or

1 neglected or did not sign the Legislative Redistricting
2 Bill?

3 A I did not sign the Senate bill. I signed the House
4 bill.

5 Q Oh, that is correct. Would you tell me why you didn't
6 sign the Senate bill?

7 A I think most of my reasons were reflected in my earlier
8 testimony in response to the lawyers for Representative
9 Graves' questioning, but I was concerned that we could
10 have done a better job from my point of view; that was
11 just one Board member's point of view. Let me point
12 out, as I also did at the time that many things passed
13 in the House while I was there by less than 5-0,
14 because there are differences of opinion.

15 Q I believe you stated earlier that the University of
16 Texas at Arlington prepared certain plans. I don't
17 believe that was pursued, or if it was I lost the train
18 of thought. Where are those plans, if you recall?

19 A They came -- or one came in two parts. As I recall,
20 most of the State was done in the first plan and then
21 the cities were done in a plan which reached my office,
22 perhaps, as late as 12 hours before the final meeting.
23 I submitted both of the plans to the Chairman, and at
24 that time it was pointed out that there were certain --
25 I don't know if flagrant is the proper term -- but

1 basic faults in the plan in terms of breaking county
2 lines and that kind of thing.

3 Q Did this have to do with both Legislative and Senate
4 redistricting?

5 A I believe it was just the House.

6 Q Who arranged for these plans, if you know?

7 A As I recall, the first I heard about them was from
8 Senator Maury who said that some professors were
9 drawing these plans and would try to get them ready.
10 But, apparently they found out the same thing we found
11 -- that it wasn't as quick and easy a job as it might
12 seem at first blush.

13 Q Did they provide for a single member district in the
14 metropolitan areas?

15 A They attempted to, yes.

16 Q And, do you know where these plans are now?

17 A As far as I know -- I may have copies or they are
18 here in this office.

19 Q If you do have copies you would be willing for us to
20 look at them and examine them and make copies of them?

21 A When these series -- When this series of depositions
22 was started I announced that any records that we had
23 or any maps we had worked from or with would be
24 available to all the parties.

25 Q Commissioner, I am going to hand you a map, which is a

1 Texas Senate District -- says "Enacted by the October
2 15, 1971" -- Now, this is the bill that you did not
3 sign, is this correct, setting up these districts?

4 A It appears to be, yes.

5 Q Now, I will call your special attention to District 21,
6 which is in South Texas beginning down around Starr
7 County and including Starr, Jim Hogg, Duval, Zapata and
8 going on around and taking in the northern part of
9 Bexar County, and coming clear into the northeast part
10 of San Antonio proper; do you locate that?

11 A Yes, sir.

12 Q Completely encircles Districts 26 and 19, which are the
13 Senatorial Districts of Senator Bernal and Senator
14 Kothman.

15 A Yes, sir.

16 Q Do you have an opinion -- do you now or did you then
17 have an opinion concerning the constitutional
18 requirement of compactness and continuity in regards
19 to District 21?

20 A My answer is somewhat the same as it was to the
21 suggestion that there were problems with the horseshoe
22 district in Harris County. The horseshoe, or circular
23 district, in my judgement, are not bad per se.

24 Q Yes, sir.

25 A I did have some reservations in my own mind about the

1 inclusion of Alamo Heights, which I believe is in this
2 district.

3 Q Alamo Heights, Olmos Park and Terrell Hills, et cetera.

4 A Yes, sir.

5 Q Are you familiar with the political voting records of
6 these areas?

7 A Yes, sir.

8 Q They are strongly Republican, isn't that true?

9 A I characterize them at least conservative, and I am
10 not familiar specifically on the basis of Republican-
11 Democrat.

12 Q Based upon this do you feel that this is a proper
13 district, concerning religion, ethnic, racial and
14 political dilution of votes?

15 A Well, I don't object per se to the core as encompassed
16 by 26 because I think it has a community of interest,
17 but I did have some reservations about the compactness
18 of theory in the Bexar County situation.

19 Q Well, for the purposes of this interrogation,
20 Commissioner, let's presume that 19 and 26 are all
21 right -- not that they are -- but I mean I am talking
22 specifically now about a dilution of this area of
23 northeastern San Antonio, very conservative votes,
24 by being incorporated with Duval County, Zapata, Jim
25 Hogg, Starr and so forth.

1 A I see what you are saying, but I am not sure that it
2 is diluted anymore than, for instance, if it were thrown
3 in in a very numerically disadvantageous way with the
4 West Side.

5 Q Let me ask you this. I suppose you are familiar with
6 the contiguous counties going north from there, north
7 and west from there, say, Comal, Kendall, Kerr,
8 Gillespie; are these basically conservative counties?

9 A Was your question "are they"?

10 Q Are they, yes, sir.

11 A Yes, I think they are.

12 Q If you will turn that over you will see just how far
13 actually this -- this is a blown up map of Bexar County.
14 And, this is 21, which goes clear down almost into town
15 to take in that northeast district. Let me ask you
16 this, based upon the idea of community of interest,
17 now would you have an opinion concerning a community
18 of interest between this area here and the voters and
19 the residents of Zapata and Starr and Jim Hogg and
20 Duval Counties?

21 A I would say that a case could be made that there could
22 be more community of interest between the residents of
23 Kendall and Guadalupe than there is for community of
24 interest with South Texas.

25 Q Well, let me ask you this, Commissioner. What community

1 of interest could there be between the people of
2 Alamo Heights and the people of Duval and Starr Counties
3 -- either economic or means of livelihood or ranching
4 as opposed to just any type of -- I am at a loss to
5 understand how there could be.

6 A Well, of course, there is no total community of interest
7 in any Senatorial District in the sense that you have,
8 for instance, in this Senatorial District both very
9 poor and very affluent sections. But, I think that if
10 I were to draw my own map Senatorially that I would have
11 preferred to put them somewhere else if I could have
12 done it and conformed to the one-man - one-vote test.
13 But, of course, there again when you have county line
14 problems, this is the thing that makes the districts
15 look funny. As long as you have to do the -- as long
16 as you have to conform to the mandate that you have one-
17 man - one-vote and that you break these county lines as
18 little as possible, you get into the strange looking
19 districts. But, I would agree with you that perhaps
20 there would be a more valid community of interest with
21 the counties to the north than perhaps the counties
22 to the south.

23 Q Well, let me ask you this: looking at this Senatorial
24 map can you see any other district in the State -- and
25 I certainly understand the problems of staying within

1 community of interest and continuity and compactness and

2 I am not oblivious to this at all -- but could you see
3 any that has a situation where it goes for such a large
4 area and has such a great diversity, in my opinion at
5 least, of community of interest and political interest
6 and so forth as you do in District 21 in any of these
7 Senatorial Districts?

8 A I would say that is probably the, based on what I know
9 of those communities, the least community of interest
10 of the districts as they are shown on the map.

11 Q Do you recall whether or not you had any correspondence
12 or contact with either Senator Bernal or Senator
13 Kothman or their constituents in regard to this?

14 A I recall that I did.

15 Q Would you be kind enough to state with whom and when
16 and the circumstances, as near as you can?

17 A I recall that Senator Bernal discussed with me only
18 the desire on his part -- and I would say I think in
19 some fairness not in a selfish sense as he explained
20 it to me -- that the Mexican American community on the
21 West Side be left intact and not severed or split in
22 half. He was also interested in an area which, as I
23 recall, was down by the Kelly Field area and in the
24 new University area which, I believe, was northwest.

25 Q Yes, sir.

1 A But beyond that he did not discuss with me any other --
2 The case he made to me was pretty much "if possible,
3 to give the Chicano community a chance at a Senate
4 member".

5 Q Well, that is certainly understandable. I mean, each
6 man, of course, wants to protect himself and his
7 constituents. Do you have an opinion at this time,
8 based upon the fairness, the continuity and compactness,
9 the community of interest, the political diversity and
10 so forth, as to the propriety of making District 21 the
11 way it is?

12 A Well, of course, are you familiar with the ripple theory
13 of redistricting, that everytime you make a change it
14 has to ripple out if you are going to come up with the
15 proper number of people in the district? I am not
16 sure, for instance, what the alternative might be, but
17 let's say we follow your line of thinking and we will go
18 with putting Terrell Hills, let's say, with Comal
19 County. Then you are faced, for instance, with putting
20 part of the West Side, as an example, with Zapata; and
21 I am not sure that I can say in my opinion that that
22 is any better. These are the problems you are
23 confronted with all the time. Everytime you make a
24 change that seems to solve a problem it seems to create
25 another one.

1 Q Yes, sir. But, it wouldn't necessarily entail the West
2 Side; I mean 19 and 26 could be left as they are. And,
3 I am certainly understanding what you are saying, but
4 there would have to be a population take-over by 21 to
5 compensate for that which would be taken out, is that
6 correct? In other words, it would have to either come
7 this way or go this way or this way or into 19 or 26
8 to make 21 commensurate with the overall population
9 then? And, by the same token, when you went this way --
10 I am sure that can't all come out in the record. If
11 you went this way -- if you went north or northwest with
12 the Terrell Hills, Alamo Heights, then of course that
13 would have to be compensated for in the other districts,
14 wouldn't it?

15 A Everytime you make a change it effects the surrounding
16 area.

17 Q My point is this: do you feel -- and I know this isn't
18 the test -- but do you feel that this is a fair and
19 equal distribution or Senatorial District line in order
20 to comply with the requirements as set down in the
21 Chaves case and the other cases -- do you think it
22 meets the test?

23 A You are almost asking me to be a Court. I would say
24 that this particular district gave me the most concern,
25 other than the Harris County situation because of the

1 way that it hooked in there, as not being a community
2 of interest district.

3 Q All right, Just one or two more questions. Do you
4 feel that as it now is drawn that there is any dilution
5 of the votes of the people of northeast San Antonio and
6 northern Bexar County by drawing the lines as they
7 have been drawn in District 21?

8 A Well, again, I would have to say: as compared to what?
9 I think they could be just as diluted by being run into
10 the West Side. And, quite frankly I think they are
11 less diluted in the manner that it is drawn than they
12 would be, for instance, if they had been run into the
13 West Side. Although, I would have felt that that would
14 be objectionable, because I think it would dilute not
15 only the West Side but the north cities. Do you follow
16 me?

17 Q Yes.

18 A But, I -- That district, as I say, gives me some
19 concern and did.

20 Q And, it surely is more diluted -- and I am not putting
21 words in your mouth, you answer it the way you want to--
22 than it would be had the district gone from northeast
23 San Antonio, north Bexar County, north and northwest
24 where you have admittedly conservative --

25 A I would say that perhaps you would have more of a

1 community of interest running these cities to --

2 Q And more of a political affiliation and similarity of
3 political beliefs?

4 A I might have someone from Kendall County to come and say
5 "Why did you dilute us with these city people". But,
6 this is a problem because you have to put everybody in
7 a district. But, it would seem to me that there would
8 be a better way to form a community of interest.

9 Q And, is it fair to say, also, a political interest?
10 Now, we have admittedly said that this is a very
11 conservative -- let's leave the Republican-Democrat
12 out of it -- a very conservative area here. And, I
13 think you will agree, and I believe you stated, that
14 Gillespie, Kendall, Kerr and these counties to the
15 north and northwest are also very conservative in
16 their voting.

17 A I will say "yes" to the description of the counties.
18 They are conservative and you would have -- But, I
19 would also point out that I don't feel we are obligated
20 to draw conservative districts as such anymore than I
21 think we are obligated to draw liberal districts. I
22 think the Court test is whether you clearly draw these
23 districts in an effort to dilute then you run into
24 trouble. But, you are going to have some dilution
25 anytime you draw any district unless you could come up

1 with one that was totally perfect.

2 Q I realize perfection is an absolute, but I am simply --
3 I am hitting the political as well as the community of
4 interest both in this District 21, and I am simply
5 trying to determine whether or not -- You have
6 admitted that it is not the best of all possible plans,
7 of course. And, whether or not it couldn't have been
8 considerably better, both from the political viewpoint
9 and from the community of interest viewpoint in going
10 in another direction and going down to the Rio Grande
11 Valley.

12 A I would say that would seem to me to be more proper.

13 MR. HASON: I believe that is all. Thank
14 you.

15 MR. McDANIEL: I have some questions of
16 him if nobody else does.

17 CROSS EXAMINATION

18 QUESTIONS BY MR. McDANIEL:

19 Q I would like to ask -- Leave those maps out if you
20 would, please, Mr. Hason. I would like to ask one or
21 two questions, Mr. Commissioner, about the Harris
22 County situation generally, and then I want to talk
23 some about this District 21 thing because it offers a
24 good comparable of some of the problems that you face
25 in drawing districts. First of all, concerning the

1 Harris County districts, are you aware of the
2 approximate Black percentage in the district of
3 Senator Jordan?

4 A As I recall, it is approximately 38 percent.

5 Q It is somewhere, in rough figures, around a third, as
6 I recall. I will take 38, though, if that is what you
7 recall. I remember it was well less than half. In
8 your discussions with the Attorney General, at least --
9 I don't know about the Lt. Governor -- was there not
10 some discussion, and in fact, cannot a pretty tenable
11 argument be made that the Black community is as well
12 or better served by several districts in which the
13 Black population is large enough to command an attention
14 as opposed to, say, one district in which they have a
15 cinch of electing a member of their own race to the
16 Legislature?

17 A It is my recollection that that argument was made,
18 and I did not list it as one of the arguments. I
19 remember that that argument was made.

20 Q Yes, sir. This is a choice, I mean, about which
21 reasonable men could differ, is it not?

22 A Yes.

23 Q The other thing, and this is not so much directed toward
24 your testimony that you have given so far on this as
25 it is to the fact that you have been a member of the

1 Legislature from Travis and Burnett Counties and have
2 been a member of the Legislature from a multi-member
3 district, and that is true, is it not?

4 A That is correct.

5 Q I recognize the remoteness argument that you get more
6 remote as the multi-member district gets larger and has
7 more members, and I don't quarrel with your view on
8 that. My question to you is: at the time you were a
9 member of the Legislature from the multi-member district
10 which included Travis and Burnett Counties, did you ever
11 feel that you could ignore the Blacks in your
12 constituency?

13 A That is a hard question.

14 Q Well, did you ever ignore them, I will put it this way?

15 A No.

16 Q Did you ever feel that you ignored the Mexican Americans
17 in your community -- I mean in your constituency,
18 excuse me?

19 A No.

20 Q Did you attempt to represent their interests?

21 A Of course, any Representative would do this. I think
22 that there were times when I feel like I was perhaps
23 closer to those two communities than the other members
24 of the delegation, and I am not sure that I had the
25 ability to be intimately familiar with their problems.

1 Q Well, the point I am driving at is the fact that you
2 were elected from a multi-member district doesn't mean
3 that the particular Representative who is elected is
4 going to choose one particular segment, say, if it is
5 51 percent or 60 percent or something like that, and
6 represent it to the exclusion of everyone else in the
7 constituency.

8 A I think that is a fair assumption.

9 Q Let me turn now to this District 21 situation here,
10 and let me make the same assumption that Mr. Eason
11 made a moment ago -- let's see, that is the Houston
12 map and we don't need it -- and that is that a decision
13 has been made concerning Districts 19 and 26 and that
14 they are to be drawn this way and then we are faced with
15 the problems of what to do with the 108,000 people that
16 are left over in Bexar County. Mr. Eason has suggested
17 that perhaps instead of putting LaSalle and Webb and
18 down to Starr County to the south, that you put instead
19 Kendall and Comal and Banderas and Gillespie and Kerr
20 and these counties to the north -- I don't know what
21 limits he would go to and I don't know what limits you
22 would have to go to to make up the population there,
23 but the point I am driving at is what would you then do
24 to get the people that you needed to complete
25 District 21?

1 A Well, of course, this is the ripple theory that I
2 talked about. You have to put everybody in a district,
3 and no one who has not gone through the agony of
4 trying to make the puzzle fit will ever understand it
5 totally; but this is the difficulty you have. I think
6 the answer is -- one of the answers is -- which 108,000
7 do you sever out, first of all.

8 Q All right.

9 A And, it is my understanding that his objection is you
10 pick a certain kind to sever out. But, I concur with
11 your agreement that once you do that you then cause
12 other problems elsewhere.

13 Q Now, you also stated that this was one of the largest
14 districts in the State and contained possibly a greater
15 degree of dissimilarity of interest than most of the
16 other districts in the State, and I agree with that.
17 But, I would point out -- And, I am doing this for
18 the sake of the record, it may prevent you from having
19 to be called as a live witness next week -- it may not
20 too -- so I won't raise your hopes in that regard.
21 But, District 25, which is immediately north of
22 District 21, goes all the way from Comal County on the
23 east to Culberson County on the west. Now, I think
24 you would agree with me, knowing the geography of our
25 State, that this is a distance of better than 400 miles-

probably closer to 500 miles.

A Yes.

Q I think you would probably also agree that a tenable argument could be made that there is at least as great a dissimilarity of interest between the people in Comal County and the people in Culberson County as there is between the people in North Bexar County and the people in Starr County.

A I would agree.

Q So that in this vast expanse of West and South Texas where you have a great area of land and not a great number of people populating it, in order to get an optimum Senatorial District which, in round figures, is 361,000 people the districts simply have to encompass an enormous area; you would agree with that, wouldn't you?

A That is correct.

Q And, you would also agree, I think, that in drawing the 21st District, at least, you are immediately boxed in to some extent by the fact that you have Nueces County on the west, which is on the Gulf of Mexico and which has a population of 237,000 and something, and then Hidalgo and Cameron Counties in the Valley which have 181,000 in Hidalgo and 140,000 in Cameron which are, are they not, logical places to start building

1 Senatorial Districts of their own.

2 A This is a fact that you run into; that you cannot get
3 around the basic population centers.

4 Q And Nueces is too large to combine with the Valley
5 counties to form a district down there, is it not?

6 A That is correct.

7 MR. McDaniel: I believe the record will
8 be sufficiently aided by this map to show what we are
9 talking about. That is all the questions I have.

10 MR. HASON: That brings to mind about two
11 more questions for me.

12 RECROSS EXAMINATION

13 QUESTIONS BY MR. HASON:

14 Q Now, as Mr. McDaniel has pointed out as far as
15 geographically or miles are concerned, Comal surely is
16 farther distant from Calhoun County than Bexar County
17 is from Starr, but I will call your attention to the
18 fact -- Well, let me ask you the question: are there
19 any metropolitan areas at all encompassed in the
20 outlying perimeter of Senatorial District 25?

21 A San Angelo is within that district, Midland is within
22 that district, and I believe Uvalde would probably be
23 the next largest.

24 Q What is the population of Uvalde; does it show on there

25 A It is 17,000.

1 Q All right. Now, what were your figures that you were
2 carving out of Bexar a moment ago?

3 A 108,000.

4 MR. McDANIEL: Bexar has 108,000 --

5 MR. EASON: In that district.

6 MR. McDANIEL: -- contributed to the
7 21st District.

8 MR. EASON CONTINUES:

9 Q Are there any, I will say, metropolitan areas -- I will
10 say cities, people that live in and work in or
11 encompassed within a city -- are there any cities in
12 25 that would be commensurate with the area of Alamo
13 Heights, Terrell Hills, Olmos Park and so forth?

14 A Midland would be the closest one to it, I believe.

15 Q But, now, I am not talking about just population,
16 Commissioner. I am talking about -- Now, of course,
17 these people are San Antonians regardless of whether
18 these towns might be little incorporated towns or not,
19 and they work in and derive their income from, and
20 their interest, community of interest lie therein.
21 Would you have such a diversity of community of interest
22 anywhere in this district -- we will count Midland and
23 San Angelo and Uvalde -- as you would have in your
24 opinion between the people of Alamo Heights, Olmos Park
25 and Terrell Hills as compared with Starr, Hidalgo.

1 Lapata and Duval Counties?

2 A I would observe that there are certainly Republican
3 oriented areas in parts --

4 MR. McDANIEL: There are those three on
5 the map.

6 A -- in parts of Midland County, which in their voting
7 patterns would certainly be parallel to the voting
8 patterns in Bexar County. And, I would guess that those
9 people might conceivably feel put upon to be combined
10 with Llano or Uvalde or Val Verde, but I quite agree
11 with you that these people are San Antonians, but the
12 fact remains that one way or another you can't give
13 away 108,000 votes in Bexar County without giving away
14 San Antonians.

15 MR. McDANIEL: Let me suggest that we
16 discuss it in another context, if we can. San Antonio
17 has got 108,000 more people in round numbers than they
18 need to make up the two districts which are completely
19 in Bexar County. Now, in round figures what this means
20 by subtraction -- I subtracted it -- it is 253,000.

21 What you are talking about, you have got to pick up a
22 quarter of a million people from somewhere to go with
23 that 108,000 people to make another district. And,
24 wherever you pick it up in that surrounding area is
25 going to require an enormous expanse of space because

1 those are not large counties.

2 MR. EASON: Well, now, of course this is
3 as a result of our looking over this map and for the
4 purposes of discussion. There is no reason, that I can
5 see, why the 108,000 that are encompassed here couldn't
6 have been taken in from District 19, which surely in
7 my mind would be more contiguous, more compact and more
8 community of interest, than going clear around the city
9 and carving in on the northeast section to, in my mind,
10 obviously take in the very conservative Republican
11 voters.

12 MR. McDANIEL: That might be and it might
13 not be, and we might have somebody down in the south
14 part of Bexar County griping about being put in
15 District 21 then. I don't know. But, the point I was
16 discussing with the Commissioner, which I think is
17 probably -- it is a question of choice. You are faced
18 with two not appealing alternatives and you have got to
19 pick one of them.

20 MR. EASON: Well, only to this extent,
21 and you and I simply are arguing here, apparently.

22 A I was getting ready to say that.

23 MR. EASON: I was simply trying to offer
24 an alternative to leave these intact. Actually, the
25 logical thing in my mind would have been to come

1 directly into San Antonio and not -- at the hazard of
2 using the word -- gerrymander around to carve in the
3 less community of interest, political interest or
4 anything that you could with the people down here.

5 MR. EASON CONTINUES:

6 Q Let me ask you this, Commissioner. Would it be your
7 opinion that the people in southern Bexar County, from
8 what you know of Bexar County politics, would have a
9 more unified community of interest with the people to
10 the south than the people from the northeast section
11 of the county and city?

12 A I am not familiar enough with the makeup of the south
13 part of the county to have an opinion about that. I
14 would guess that anytime you are taking 108,000 people
15 you are going to have a problem with community of
16 interest -- and perhaps a fairly serious one.

17 MR. McDANIEL: Let me ask this question,
18 then. If you did that, Commissioner, then you would
19 be putting that 108,000, who are the Republicans and
20 conservatives in the north, with either the Latin vote
21 or the West Side or the liberal Democrat vote, so they
22 are still in a dissimilar district, is that correct?

23 A That is correct.

24 MR. EASON: That is all.

CROSS EXAMINATION

QUESTIONS BY MR. BERG:

Q For the purpose of the record, my name is David Berg, the Harris County lawsuit. Commissioner, you have testified you did not ignore the Black or the Chicano vote when you were a member of a multi-member district?

A I believe my statement was "I don't think any Representative would knowingly ignore a group, and particularly because of their color".

Q Now, let's make the wild assumption for a moment, Commissioner Armstrong, that somehow in District 15 of Harris County a racist were elected -- just that wild assumption. Because you didn't ignore the needs of Blacks and Chicanos doesn't mean that someone else might not ignore them if he thought he could be elected without them, is that a fair statement?

A I would agree that that situation could occur.

Q Historically and politically Blacks and Chicanos have been ignored by the elected officials of their districts -- Historically and politically, Blacks and Chicanos have been ignored especially in the South by elected officials, have they not?

A In the past this has been historically correct.

Q It is not inconceivable, is it, then, that were these districts to elect a racist -- or just people who

1 thought they could be elected without Blacks and
2 Chicamos -- isn't it possible they could once again
3 be ignored?

4 A I would agree that that is possible. I think we are
5 engaging in some speculation. Although, I would say
6 it is possible.

7 Q Of course, my point is just because you paid attention
8 to Blacks and to any minority group doesn't mean
9 someone else would.

10 A I agree.

11 Q All right. Now, one last question. I want to show
12 you what has been marked -- though not offered yet --
13 as Plaintiffs' Exhibit 1 yesterday. It wasn't offered
14 at that time but I am going to offer it now. This
15 is a -- Are you familiar with this map submitted by
16 the Harris -- the Chamber of Commerce of Harris County?

17 A I have seen that map but I do not believe I have ever
18 seen it in my office -- I don't think it was ever
19 submitted to me. It could have been, but I don't
20 recall that being in my files.

21 Q It doesn't take more than a quick look, but would you
22 make a comparison of the map submitted by the Chamber
23 of Commerce of Harris County, or of Houston, and
24 compare it to what was finally drawn as the Senatorial
25 District, for instance, in the south and the core area

1 of the city, the northeast. Do you see a similarity
2 between the two maps?

3 A Yes, there is a basic similarity.

4 Q All right. Now, the question I have for you, are the
5 three census tracts that you indicated earlier you
6 were concerned with -- the numbers are too small but
7 it is in the record -- are left in what they call the
8 northeast part of the county -- in their plans.

9 A In the Chamber of Commerce plans, yes.

10 Q Would that have made -- We just don't know and we are
11 wondering, would that have made this an area with a
12 higher, much higher, percentage of Blacks than is
13 presently constituted in the new Senatorial District?

14 A I would have to look at a demographic map to tell.

15 Q Can you give us anything on that?

16 A I am not that familiar with it.

17 MR. BERG: Okay. I would like to offer
18 this into the record. I think it would be Plaintiffs'
19 Exhibit 2, and this is taken from the files of the
20 Attorney General.

21 (Plaintiffs' Exhibit No. 2 was
22 (marked for identification.

23 MR. BERG: I don't have anything further.
24
25

1 MR. McDANIEL: I don't have anything
2 further.

3
4
5 Bob Armstrong

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9
10
11

12 THE STATE OF TEXAS

13 COUNTY OF TRAVIS

14 SUBSCRIBED and sworn to before me by the
15 said witness, BOB ARMSTRONG, on this the ____ day of
16 _____, A.D. 1972.

17
18
19 Notary Public in and for
20 Travis County, Texas
21
22
23
24
25

1 THE STATE OF TEXAS I
2 COUNTY OF TRAVIS I

3 I, JACK D. SYKES, a Notary Public duly
4 commissioned and qualified in and for the County of Travis,
5 State of Texas, do hereby certify that, pursuant to agreement
6 of counsel, there came before me on the 28th day of December,
7 A.D. 1971, at 3:45 o'clock P.M., at the Supreme Court
8 Building, Attorney General's Office, Austin, Travis County,
9 Texas, the following named person, to-wit: BOB ARMSTRONG,
10 who was by me duly sworn to testify to the truth and nothing
11 but the truth of his knowledge touching and concerning the
12 matters in controversy in this cause; that he was thereupon
13 carefully examined upon his oath and his examination reduced
14 to typewriting under my supervision; that the deposition is
15 a true record of the testimony given by the witness; and that
16 the said witness read the same and subscribed his name
17 thereto.

18 I further certify that I am neither
19 attorney or counsel for, nor related to or employed by, any
20 of the parties to the action in which this deposition is
21 taken, and further that I am not a relative or employee of
22 any attorney or counsel employed by the parties hereto or
23 financially interested in the action.

24 IN WITNESS WHEREOF I have hereunto set
25

1 my hand and affixed my Notarial seal on this the _____ day
 2 of _____, A.D. 1972.

3
 4
 5 **JACK D. BYRNE**
 6 Notary Public in and for
 7 Travis County, Texas.

8 My Commission expires 1st day of June, A.D. 19____.

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PX-1

JS

Armstrong Dep

MINUTES
LEGISLATIVE REDISTRICTING BOARD
OF TEXAS
1971

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

AUGUST 24, 1971

9:00 a.m.

Old Supreme Court Room, Capitol Building

Meeting was called to order by Lieutenant Governor Barnes.

Present: Lieutenant Governor Ben Barnes
Speaker Gus Mutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong
Mr. Nola White, representing Attorney General Crawford Martin.

On motion of Commissioner Bob Armstrong, seconded by Speaker Mutscher, Attorney General Martin was elected temporary Chairman.

Lieutenant Governor Barnes announced that the Board would hear all of those who wished to make a presentation before the Board.

Representative Curtis Graves was recognized and presented a recommended plan for Harris County.

Mr. Nola White read the following statement on behalf of Attorney General Martin:

Members of the Commission:

General Crawford Martin asked me to read the following statement:

1. I wish to apologize to this Commission for my absence this morning. I have a most urgent appointment in Washington, D.C., with the Justice Department with reference to a critical situation facing Texas at this time in connection with the price and wage freeze. It was my firm conviction that it would be in the public interest to take care of the State's business with the U. S. Department of Justice rather than be here at this meeting.

I would like to make it clear that I will actively participate in the decisions of this Commission; I will personally very carefully review all evidence to be presented here today, and it is with extreme regret that I feel compelled to absent myself from this Commission meeting.

2. It is my hope that this Commission will listen to everyone that desires to be heard in connection with the matters pending before this Commission, regardless of the time it takes to do so. It is also my wish that this meeting be open to the public.

3. In addition to the work of this Commission insofar as redistricting the Senate is concerned, which certainly is the prime and immediate objective of this Commission, it is my hope that this Commission will see fit to instruct its staff to begin work at the earliest possible date on the House apportionment, in the event that the Supreme Court should hold that it is the duty of this Commission to reapportion the House.

The Board then heard presentations by Representative Bill Blythe, Senator Joe Bernal, and Mr. John Cummings and Mr. Leon Moody.

Lieutenant Governor Barnes read the names of those who had submitted plans to the Legislative Council for transmittal to the Board, and announced that copies of the plans would be made available by the Council to interested parties.

There being no more witnesses to appear before the Board, upon motion of Commissioner Armstrong, the Board recessed subject to call of the Chair.

Ben Barnes
Ben Barnes, Presiding

Members of the Commission:

General Crawford Martin asked me to read the following statement:

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MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

September 10, 1971 9:00 a.m.

Old Supreme Court Room, Capitol Building

The Board was called to order by Chairman Martin.

Present: Attorney General Crawford Martin, Chairman
Lieutenant Governor Ben Barnes
Speaker Gus Matschauer
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

On motion of Lieutenant Governor Barnes the Board dispensed with the reading of the minutes of the previous meeting.

Mrs. Malcolm Milburn was recognized by the Chair and made a presentation upon a suggested Senate redistricting plan.

There being no other witnesses, on motion of Lieutenant Governor Barnes, the Board adjourned subject to call of the Chair.


Crawford Martin, Chairman

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MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

September 14, 1971 8:30 a.m.

Attorney General's Conference Room

Chairman Crawford Martin called the meeting to order.

Present: Attorney General Crawford Martin, Chairman
Lieutenant Governor Ben Barnes
Speaker Gus Mutsaers
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

The Board dispensed with the reading of the minutes of the previous meeting.

The notice of public meeting of the Board was read (copy made a part of these minutes).

Chairman Martin laid out the following resolution:

BE IT RESOLVED BY THE LEGISLATIVE REDISTRICTING BOARD OF TEXAS:

That although this Board stands ready and willing to perform all duties conferred upon it by law, with reference to the apportionment of the State into House of Representative districts, it is the official position of this Board that since the 62nd Legislature of the State of Texas in its regular session in 1971 passed an Act (HB 783) apportioning the State into representative districts, this Board, under the Constitution and the laws of the State of Texas, has no jurisdiction to apportion the State into representative districts; and that the recent judgment and decision of the Supreme Court of Texas rendering said Act invalid did not serve to confer such jurisdiction on this Board, but rather served to place the business of the apportionment of the State into representative districts back into the hands of the Texas Legislature, with it being understood, however, that if the Supreme Court of Texas should determine that the Board is in error in this position, the Board will abide by and act in accordance with the Court's decision.

Lieutenant Governor Barnes moved adoption of the resolution.

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Speaker Gus Mutscher read a prepared statement (copy made a part of these minutes), and offered a substitute motion that the Board proceed with dispatch to redistrict the House of Representatives.

The resolution and the substitute motion were discussed.

By voice vote, the substitute motion failed of adoption.

By voice vote, the motion to adopt the resolution was adopted.

On motion of Lieutenant Governor Barnes the meeting was adjourned subject to the call of the Chair.


Crawford Martin, Chairman

1842

NOTICE OF PUBLIC MEETING

Agency: Redistricting Board of Texas
Date: September 14, 1971
Time: 8:30 a.m.
Place: Attorney General's Conference Room
Seventh Floor
Supreme Court Building
Austin, Texas
Subject: The subject of the meeting is the power of the Board to undertake and accomplish the apportionment of the State into House of Representatives districts and to ascertain the position, if any, to be taken by the Board on such subject.

Said meeting is in the nature of an urgent public necessity because guidelines are urgently needed from the Supreme Court of Texas on the question of the Board's power regarding House of Representatives apportionment, a concern to the attention of the Chairman of the Board. Supreme Court of Texas probably will not consider the question of its jurisdiction of a mandamus suit with respect to said question until the Board first takes a position on the question of whether or not it will undertake to exercise such power.

2:00 P.M.
SEP 14 1971

Gentlemen: I have serious reservations about proceeding in the manner proposed here today concerning the redistricting of the House of Representatives and I would like to give you my reasons.

FIRST: All of us know that the people of Texas do not want a special session of the Legislature at a cost of approximately one-half million dollars solely for the purpose of redistricting. It seems that we are merely making maneuvers to keep from making decisions.

SECOND: If you take the position here proposed, then the Attorney General, who is supposed to represent this Board in Court being the State's Attorney, must contend that we do not have the authority to act and in effect will be confessing judgment against our authority because that will be the effect of his vote today.

THIRD: On the other hand, if we do redistrict and that plan is then attacked we would at least have done all we can do. And even if a court should finally hold that we lacked the authority we are in no worse position than we are today — and at least we have tried.

FOURTH: If the purpose of this resolution today is to "set up" a case for the Supreme Court, that Court may decide that we are asking for an advisory opinion and could dismiss the case on that ground alone. By then our constitutional time may have run out.

FIFTH: There are those in this State who want no redistricting at all and would be falling into that trap. I do not think anyone here seriously feels that the Federal Courts will wait until 1973 for a new redistricting bill to take effect, especially with the present population disparities. This brings about these possibilities: if the Federal Court should hold present districts unconstitutional then all 180 House Members would have to run at large, or a special session would have to be called before January of 1972. The Governor has indicated that he would not call a special session for this purpose.

So I say that we have an obligation to the people of Texas to act and to act soon. To fail to act would be to abdicate our duty to Texas and its citizens. Gentlemen: I will not be a party to that; I therefore respectfully submit this substitute motion.

"I move that this Board proceed with dispatch to redistrict the House of Representatives."

In support of this motion I would remind this Board that to do otherwise will be to invite an untenable position to which I cannot and will not agree.

The very purpose for which this Board was authorized is to meet a situation such as the one presented to us now. Redistricting is not easy and we should not seek the easy way out. I believe that we have both the authority and the duty to perform and we cannot and should not hide behind the courts.

1845

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

SEPTEMBER 30, 1971 9:00 a.m.

Old Supreme Court Room, Capitol Building

Meeting was called to order by Chairman Martin.

Present: Attorney General Crawford Martin, Chairman
Lieutenant Governor Ben Barnes
Speaker Gus Mutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

On motion of Lieutenant Governor Barnes the Board dispensed with the reading of the minutes of the previous meeting.

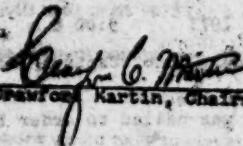
The Board then heard the following:

Representative Dick Reed
Representative Bill Blythe
Representative Joe Allen
Representative Bob Cammage
Representative Fred Agnich
Mr. John Hill
Mr. Mike Hopkins
Mr. Earl Luna
Representative Jack Blanton
Representative Joe Hawn
Representative John Boyle
Mr. Dave Pickett
Mr. Tom Crouch
Mr. Jack Hansen
Mr. Bob Binder
Mr. Lee Halford

Chairman Martin read several telegrams.

1846

On motion of Lieutenant Governor Barnes, the Board recessed subject to call of the Chair.


Crawford Martin, Chairman

1847

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

OCTOBER 6, 1971

9:00 a.m.

Lieutenant Governor's Committee Room, Capitol Building

The meeting was called to order by Chairman Martin.

Present: Attorney General Crawford Martin, Chairman
Speaker Gus Mutsaers
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

On motion of Mr. Armstrong, the Board dispensed with the reading of the minutes.

Chairman Martin then recognized Senator Oscar Mauzy who in turn introduced the following who addressed the Board:

Mr. Victor Robertson, Jr.
Professor Albert W. Alshuler
Mr. Phil Strickland
Joe Leecos
Kenneth Keeth
Alfred Hill

Senator Mauzy then made a presentation to the Board.

Chairman Martin offered the following resolution:

L.R.B. Res. No. 1

By Martin

R E S O L U T I O N

WHEREAS, The Legislative Redistricting Board of Texas assembled on August 24, 1971, in order to carry out its duties as prescribed by Article 3, Section 28, of the Texas Constitution; and

WHEREAS, Article 3, Section 28, contains the provision that "The Legislature shall provide necessary funds for clerical and technical aid and for other expenses incidental to the work of the Board"; now, therefore, be it

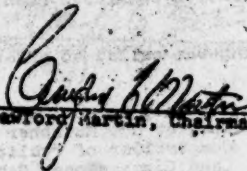
RESOLVED by the Legislative Redistricting Board of Texas, That the expenses mentioned above be paid equally from the Legislative Expense Funds of the House and the Senate, by warrant drawn by the Comptroller of Public Accounts on vouchers signed by the Chairman of the Legislative Redistricting Board of Texas, or a person authorized by the Chairman in writing to sign the vouchers, and the presiding officers of the respective Houses of the Legislature.

1848

The resolution was adopted.

The Board then heard Mr. John Alanis.

On motion of Speaker Mutscher the Board adjourned
subject to call of the Chair.


Crawford Martin, Chairman

1849

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

OCTOBER 15, 1971 4:00 p.m.

Old Supreme Court Room, Capitol Building

The meeting was called to order by Chairman Martin.

Present: Attorney General Crawford Martin, Chairman
Lieutenant Governor Ben Barnes
Speaker Gus Nutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

On motion of Lieutenant Governor Barnes the minutes of the previous meeting were approved.

Chairman Martin then laid before the Board a proposed reapportionment of the Texas Senate. Chairman Martin signed the official Senate reapportionment document and requested the Secretary to the Board, Mr. Robert E. Johnson, to present the document to each of the remaining members of the Board so that they might exercise their options of signing or not signing the document.

Mr. Johnson then presented the document to Comptroller Calvert, Commissioner Armstrong, Lieutenant Governor Barnes, and Speaker Nutscher and returned it to Chairman Martin.

Chairman Martin then announced that there were three signatures on the document and that this was the number required under the Constitution.

Chairman Martin then asked those who had signed the document to stand and raise their right hands to acknowledge before a Notary Public that they affixed their signatures to the document as the act and deed of the Legislative Redistricting Board of Texas.

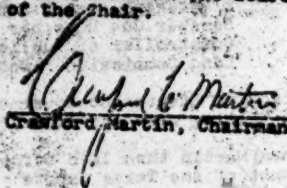
The Honorable Crawford Martin, Chairman, Attorney General of Texas; the Honorable Ben Barnes, Lieutenant Governor of Texas; and the Honorable Robert S. Calvert, Comptroller of Public Accounts of Texas, then acknowledged before Mr. James R. Reynolds, Notary Public in and for Travis County, Texas, that they had signed the document as the act and deed of the Legislative Redistricting Board of Texas. Mr. Reynolds then affixed his signature and seal to the document.

1850

Chairman Martin then advised the Board that the Constitution provides that upon the signing of the document it shall be filed with the Secretary of State of the State of Texas and that he would pressed to see that it was properly filed.

The Board then discussed the status and alternative approaches to apportioning the state into representative districts.

On motion of Lieutenant Governor Barnes the Board adjourned subject to the call of the Chair.


Crawford Martin, Chairman

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

OCTOBER 22, 1971

4:00 p.m.

Old Supreme Court Room, Capitol Building

The meeting was called to order by Chairman Martin.

Present: Attorney General Crawford Martin, Chairman
Lieutenant Governor Ben Barnes
Speaker Gus Mutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

Chairman Martin laid before the Board a proposed reapportionment of the representative districts of Texas.

Chairman Martin then recognized Speaker Mutscher who moved to postpone consideration upon the final adoption of the plan until 11 a.m. tomorrow morning (Saturday, October 23) and requested a roll call vote.

Chairman Martin stated the motion and asked the Secretary, Mr. Robert E. Johnson, to call the roll of the members of the Board.

The vote on the motion was as follows: Mr. Speaker, aye; Mr. Comptroller, no; Mr. Commissioner, no; Mr. Lieutenant Governor, no. Chairman Martin announced that the Chair voted no.

Chairman Martin announced that the motion failed of adoption.

Chairman Martin then asked the Secretary to present document to the members of the Board so that they might give their options of signing or not signing the document. Mr. Johnson presented the document to each member of the Board and returned it to Chairman Martin.

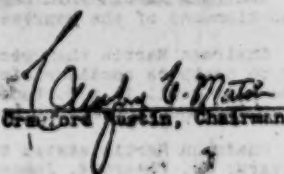
Chairman Martin then asked those who signed the document to stand and raise their right hands to acknowledge before a Notary Public that they had affixed their signature to the document as the act and deed of the Legislative Redistricting Board of Texas.

1852

The Honorable Crawford Martin, Chairman, Attorney General of Texas; the Honorable Ben Barnes, Lieutenant Governor of Texas; the Honorable Robert S. Calvert, Comptroller of Public Accounts of Texas; and the Honorable Ben Armstrong, Commissioner of the General Land Office of Texas, then acknowledged before Mr. James R. Reynolds, Notary Public in and for Travis County, Texas, that they had signed the document as the act and deed of the Legislative Redistricting Board of Texas. Mr. Reynolds then affixed his signature and seal to the document.

On motion of Lieutenant Governor Barnes the reading of the minutes of this meeting would be dispensed with and the Chair be allowed to sign the minutes as the final meeting of the Board.

Chairman Martin then announced that the Board was adjourned sine die.


Crawford Martin, Chairman

1853

PX-2

JS

Armstrong Dep.

PROPOSED

STATE SENATE DISTRICTS

HARRIS COUNTY

and

PORT BEND COUNTY

1854

SENATORIAL DISTRICTS

Harris County and Fort Bend County

(Five Senatorial Districts)

Core District

Blue

Population: 356,543

South District

Yellow

Population: 357,074

Harris County 304,760
Fort Bend County 52,314

Southeast District

Pink

Population: 358,759

Northeast District

Green

Population: 360,419

West District

Orange

Population: 361,431

1855

JUSTIFICATION

This Senate Redistricting Plan:

1. Avoids dismembering of Harris County.
2. Involves only one other county (Fort Bend), which has a close community of interest with other residents of the district in which it is placed.
3. Does not disenfranchise any minority group.
4. Total population within each district is almost equal.
5. Follows census tract boundaries--does not divide any census tract.
6. Does not pair any present incumbent against another.
Incumbents, who have indicated they will seek reelection, live in districts composed of people whose past voting patterns are compatible with the political philosophy of such incumbent.
7. Complies with all known court rulings on legislative redistricting and therefore should stand up in court.

1856

CORE DISTRICT

<u>Census Tracts</u>	<u>Population</u>	<u>Census Tracts</u>	<u>Population</u>
125	1,391	506	9,981
126	7,448	507	8,683
201	10,834	508	5,925
205	16,235	509	12,867
206	9,231	510	6,635
316	5,544	511	6,951
401	5,963	512	7,617
402	11,551	513	3,501
403	7,058	514	7,709
404	6,805	515	8,023
405	9,340	516	7,778
406	5,978	517	13,449
407	10,349	518	13,561
421	3,698	527	9,680
440	16,641	528	2,033
441	3,847	529	4,513
442	12,995		
443	23,189	Total Core District 356,543	
444	10,175		
447	13,844		
501	136		
502	3,211		
503	13,777		
504	4,097		
505	6,226		

1857

SOUTH DISTRICT

<u>Census Tracts</u>	<u>Population</u>	<u>Census Tracts</u>	<u>Population</u>
302	5,813	343	7,187
308	7,024	344	1,706
314	7,621	345	6,601
318	19,071	346	1,970
319	5,786	348	11,527
320	15,447	400	3,381
323	8,408	409	3,963
324	11,900	410	5,973
325	9,213	411	1,400
326	7,729	412	9,956
327	10,399	413	8,654
328	16,144	414	8,946
331	1,029	415	14,834
332	6,479	416	10,611
333	2,742	428	8,476
334	5,559	429	4,616
335	12,921	430	3,439
336	1,253	431	6,951
337	427	Fort Bend County	52,314
338	2,641		
339	10,017	Total South District	357,074
340	7,451		
341	347		
342	1,080		

1858

SOUTHEAST DISTRICT

<u>Census Tracts</u>	<u>Population</u>	<u>Census Tracts</u>	<u>Population</u>
121	3,719	347	18,217
122	4,627	349	9,537
123	2,042	350	8,877
124	4,822	351	4,009
302	6,567	352	274
301	10,545	353	11,445
303	3,581	354	0
304	14,304	355	14,403
305	11,318	356	13,155
306	7,424	357	18,931
307	12,519	358	4,302
309	9,723	359	4,861
310	6,322	360	12,820
311	9,395	361	126
312	7,979	362	131
313	9,801	363	991
315	7,663	364	740
317	15,684	365	8,740
321	11,704	366	6,791
322	11,760	367	340
329	10,876	368	6,263
330	5,413	369	2,262

1859

(Southeast District - page 2)

<u>Census Tracts</u>	<u>Population</u>
170	746
171	9,490
372	596
373	10,492
374	5,472
375	74
	<hr/>
	358,759
	Total Southeast District

1860

NORTHEAST DISTRICT

<u>Census Tracts</u>	<u>Population</u>	<u>Census Tracts</u>	<u>Population</u>
203	13,497	233	1,634
204	4,167	234	2,390
207	10,159	235	3,931
208	14,711	236	1,747
209	878	237	625
210	11,981	238	2,560
211	10,516	239	8,490
212	9,563	245	4,490
213	5,311	246	1,499
214	3,586	247	332
215	16,903	248	415
216	6,796	249	2,355
217	11,807	250	458
218	11,190	251	1,917
219	5,964	252	558
224	14,239	253	1,063
225	13,044	254	805
226	3,014	255	1,681
227	5,818	256	445
228	3,281	257	578
229	1,790	258	4,632
230	18,529	259	6,440
231	6,965	260	166
232	5,844	261	1,014

1861

(Northeast District - page 2)

<u>Census Tracts</u>	<u>Population</u>	
262	857	
263	4,671	
264	3,366	
265	1,850	
266	4,997	
267	4,849	
268	1,791	
269	6,416	
270	4,611	
271	3,170	
272	4,390	
273	4,026	
274	1,368	
275	81	
519	13,602	
520	12,975	
521	10,253	
526	16,491	
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	360,419	Total Northeast District

1862

WEST DISTRICT

<u>Census Tracts</u>	<u>Population</u>	<u>Census Tracts</u>	<u>Population</u>
220	6,904	437	146
221	2,478	438	7,795
222	6,444	439	3,866
223	12,251	445	12,873
240	8,469	446	21,046
241	3,821	448	215
242	865	449	179
243	1,733	450	185
244	1,901	451	273
417	12,640	452	3,422
418	6,369	522	11,967
419	14,169	523	11,908
420	14,091	524	3,121
422	16,486	525	10,659
423	17,616	530	8,929
424	12,590	531	13,744
425	14,997	532	12,736
426	7,640	533	10,695
427	6,118	534	1,734
432	2,345	535	282
433	6,359	536	2,304
434	880	537	1,283
435	5,937	538	1,994
436	10,457	539	1,795

1863

(West District - page 2)

<u>Census Tracts</u>	<u>Population</u>
540	2,102
541	1,926
542	2,230
543	492
544	37
545	4,452
546	399
547	457
548	352
549	396
550	428
551	1,236
552	1,191
553	2,734
554	435
555	941
556	1,731
557	460
558	2,508
559	2,173
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361,431	Total West District

1864

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11 ORAL DEPOSITION OF ROBERT E. JOHNSON
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL	}	
VS.		NO. A-71-CA-142
BEN BARNES, ET AL	}	
DIANA REGESTER, ET AL		
VS.	}	NO. A-71-CA-143
BOB BULLOCK, ET AL		
JOHNNY MARRIOTT, ET AL	}	
VS.		NO. A-71-CA-144
PRESTON SMITH, ET AL	}	
VAN HENRY ARCHER, JR.		
VS.	}	NO. A-71-CA-145
PRESTON SMITH, ET AL		

APPEARANCES

Mr. David R. Richards, of Austin, Texas,

Appearing on behalf of Plaintiffs,
Diana Regester, et al

Mr. Robert M. Greenberg, of Dallas, Texas

Appearing on behalf of Plaintiffs,
Johnny Marriott, et al

Mr. Michay McGuire

Mr. Nathan W. Eason

} Of San Antonio, Texas

Appearing on behalf of Plaintiffs,
Van Henry Archer, Jr., et al

APPEARANCES - (Cont'd)

Mr. Stuart Melkin }
Mr. Davis Berg } Of Houston, Texas,

Appearing on behalf of Plaintiffs,
Curtis Graves, et al

Mr. Walter Irvin }
Mr. Cleo Steele } Of Houston, Texas,

Appearing on behalf of Plaintiff
Interveners, Washington, et al in the
Tyler Case

Mr. Ed Marx, Jr., of San Antonio, Texas,

Appearing on behalf of Interveners in
the Tyler Case

Mr. E. Brice Cunningham, of Dallas, Texas,

Appearing on behalf of Interveners,
Conrad, et al

Mr. Earl Luna, of Dallas, Texas,

Appearing on behalf of Defendant,
Roy Orr

Mr. Sam McDaniel, Assistant Attorney General of
Texas, Austin, Texas,

Mr. Al Curry, of the firm of Fulbright, Crocker,
Fracum, Bates & Jaworski, of Houston, Texas,

Appearing on behalf of Defendants

1 DEPOSITION of ROBERT E. JOHNSON, a witness
2 of lawful age, taken on behalf of the Plaintiffs, Diana
3 Regaster, et al, in the above entitled causes, pending
4 in the District Court of the United States for the
5 Western District of Texas, Austin Division, pursuant
6 to the notice heretofore issued and the agreement
7 hereinafter set out, before Harry L. Wear, a notary
8 public in and for Travis County, Texas, at the Supreme
9 Court Building, in the City of Austin, Travis County,
10 Texas, at 2:00 o'clock, p.m., on the 27th day of
11 December, 1971.

12 (Thereupon, the parties agreed that
13 said deposition would be taken on
14 the same agreement as outlined in
15 the beginning of the deposition of
16 Mr. Crawford C. Martin, which is as
17 follows:

18 MR. RICHARDS: Do you want to consider,
19 Sam, that this is taken by -- I guess it is taken
20 pursuant to notice; inasmuch as General Martin is a
21 defendant, do you -- he is a defendant in some of the
22 cases?

23 GENERAL MARTIN: I am a defendant in some,
24 and not in some of the others.

25 MR. RICHARDS: I didn't know whether Sam
wanted to treat it just by notice, or how you wanted
it.

1 **MR. McDANIEL:** I have no objection to
2 treating it as if it were taken by notice, and my only
3 thing is, I do want -- I am not going to waive signa-
4 ture on them. Other than that, why, we can agree that
5 it can be used and that you can reserve your objections
6 until the time of trial, as far as I am concerned.

7 **MR. RICHARDS:** All right. And so we --
8 do I understand that we are all in agreement that we
9 will waive the provisions of the Federal Rules that
10 require the witness to be absent in order to use the
11 deposition, that the deposition may be used -- that
12 we will waive the provisions of the Federal Rules
13 that require the witness to be unavailable in order to
14 use this deposition, and that this deposition may be
15 used as testimony either before the Court or before the
16 Master; is that correct, without proving General
17 Martin's unavailability?

18 **MR. McDANIEL:** I have no objection to that,
19 although I don't want that stipulation to indicate that
20 I am agreeing to present General Martin's testimony
21 strictly by deposition.

22 **MR. RICHARDS:** I understand. You are not
23 waiving the right to call him as a witness?

24 **MR. McDANIEL:** That is correct. That is
25 correct.

1 MR. LUNA: For the State Chairman, we do
2 not waive our right to cross-examine him at the trial,
3 and in the event he should not be available at trial,
4 we do not then waive the use of this -- if he is avail-
5 able, but is not placed on the witness stand, we don't
6 waive our right to cross-examine him at the trial.

7 MR. RICHARDS: Well, let me be sure I
8 understand. Suppose that General Martin is not called
9 as a witness at the time of trial, what is your position
10 with respect to the use of this deposition at the time
11 of trial?

12 MR. LUNA: I reserve the right to examine
13 him in person.

14 MR. RICHARDS: Well, then, at least you
15 are on notice from me that it is going to be my
16 position that if you have questions to ask General
17 Martin, you had better ask them today, because I will
18 intend to offer this deposition as evidence at the time
19 of trial, and you are here pursuant to notice, and at
20 least you have the opportunity to examine him, and it
21 will be my position, if you don't afford yourself that
22 opportunity today, that we will offer the deposition as
23 first-hand testimony.

24 MR. LUNA: I understand.

25 MR. RICHARDS: All right. Sure.

1 MR. LIMA: I may ask him some questions
2 today, but I am simply not waiving any of my rights
3 by participating in this deposition that I don't
4 automatically waive thereby.

5 MR. RICHARDS: Is there anybody else who
6 has got a position, attorneys who are present who want
7 to put any position of record in the case?

8
9 ROBERT E. JOHNSON,
10 a witness named in the notice heretofore issued,
11 being first duly sworn in the above cause,
12 testified on his oath as follows:

13
14 DIRECT EXAMINATION

15 Questions by Mr. Lima:

16 Q Will you please state your name for the record?

17 A Robert E. Johnson.

18 Q What is your position?

19 A Executive Director of the Texas Legislative Council.

20 MR. LIMA: Mr. McDaniel, are we going to
21 take this deposition under the same agreement that
22 was made in connection with the one relating to Mr.
23 Martin?

24 MR. McDANIEL: Yes, that is acceptable to
25 me.

MR. IDAR: Okay.

Q Are you the Director of the Texas Legislative Council?

A Yes, sir.

Q How long have you held that position?

A Since September of 1963.

Q What did you do prior to that?

A Practiced law in Dallas.

Q Are you from Dallas?

A Yes, sir, originally.

Q I wonder if you could summarize for us right quick, what are the functions of the Texas Legislative Council?

A It is a statutory creation of the Legislature. It is made up of ten members of the House, five members of the Senate; the Lieutenant-Governor is Chairman, and the Speaker is Vice-Chairman of the Council. We have a staff, and generally we work for the Legislature in drafting legislation, doing research, studies, recodification and revision of statutes.

Q Are you funded entirely by the appropriations from the Texas Legislature?

A No, sir. We do have -- the majority of our funding is from the General Revenue Fund of the State, but we do have an inter-agency contract with, I believe,

1 the Commission for the Blind to do a study for them,
2 which, on a -- I think it is an eighty-twenty basis,
3 funded by the Federal Government.

4 Q Is that the only program, shall I say, where you have
5 federal funds involved, or are there any others?

6 A That is the only one that has federal funds involved,
7 yes, sir.

8 Q Now, with respect to the Texas Legislative Redistrict-
9 ing Board, which is a Board created by the Texas
10 Constitution, what was your relationship to that
11 particular Board during the course of their proceedings
12 for the purpose of adopting a Senate and House
13 Redistricting Plan?

14 A Generally, we perform the same function for them that
15 we do for the Legislature, basically the drafting,
16 drawing of maps, and the drafting of the instrument
17 which was filed with the Secretary of State as the
18 order of the Board.

19 Q You are the director of the staff?

20 A Yes, sir.

21 Q How big a staff do you have? Can you give me some
22 idea?

23 A About sixty people, I believe.

24 Q Okay. As far as the Legislative Redistricting Board,
25 in connection with the work that you and your staff

1 did for that Board, did you do that work at the
2 direction of the Board?

3 A Yes, sir, either the Board -- when you say "the
4 Board," do you mean the total Board or the
5 individuals? But they were for the Board, yes, sir,
6 the members.

7 Q Let me ask you this: Let's distinguish between the
8 Board and -- I'll say Board and individual members
9 of the Board. Number one, did the Board as a Board
10 give you any directions or furnish you with any guide-
11 lines or any instructions as to your work for them
12 in drafting proposed redistricting plans for the
13 House and the Senate?

14 A Yes, sir, they did.

15 Q Remember, my question bears to the Board as a whole.

16 A The Board?

17 Q I say Board as an official body.

18 A Yes, sir, on the final plans we were advised to do
19 these final plans and present them to the Board to
20 be adopted or for their consideration.

21 Q Did the Board furnish you with whatever instructions
22 we are talking about in writing?

23 A No, I don't recall any written instructions.

24 Q Were you present -- I understand there was -- I don't
25 recall exactly -- four or five official meetings of

1 the Board. Were you present ---

2 A Yes, sir.

3 Q --- at those meetings?

4 A Yes, sir.

5 Q Do you recall how many actually were held, official
6 meetings of the Board?

7 A No, sir. As you say, there was four or five, perhaps
8 six.

9 Q And you were present at all of them?

10 A Yes.

11 Q These were all public meetings?

12 A Yes, sir.

13 Q Were you present at any meetings of the Board that
14 were not public?

15 A I think that there was one meeting held in this room
16 here where the Board adopted a resolution upon which
17 the lawsuit was predicated on whether or not they
18 should do the House redistricting. I think they
19 adopted the resolution stating that they would not
20 redistrict the House Representatives, and that was the
21 basis on which the mandamus action was brought in the
22 Supreme Court to determine whether or not they should
23 redistrict the House.

24 Q This was prior to the Court acting?

25 A Yes, sir.

1 Q After the Court acted and issued the mandamus, was
2 there a further meeting on this issue, as far as the
3 Board was concerned, that you were present at?

4 A On what issue?

5 Q On the House issue?

6 A Yes, sir, after they adopted -- the chronology may
7 be a little mixed up, but as I recall, after they
8 adopted the Senate Bill or the Senate Resolution,
9 they then proceeded to go into -- to hear testimony
10 on the House.

11 Q Okay. Now, was it your staff altogether, or was it
12 only your staff that worked on the House Redistricting
13 Plan, or did you have other people collaborating
14 with you?

15 A I can't say if there were other people collaborating
16 with us. I know there were other people working on
17 it. Whom, I don't know. I know that there were
18 individual members would send us plans.

19 Q Who were the members of your staff that worked on
20 the House Redistricting Plan that was ultimately
21 adopted by the Board?

22 A All right. Let's see. John Potter, the Assistant
23 Director, a young man named Mark -- and I can't even
24 recall his last name now -- he was part-time with
25 us. He is a student down at San Marcos, who actually

12

12

1 did the drawings. Bob Freeman ---

2 MR. CUNNINGHAM: F-r-e-e-m-a-n?

3 A Yes, sir. There were any number of people that did
4 proofing.

5 Q (By Mr. Idar) I am concerned with those that did
6 the principal work involved here, not some clerk or
7 somebody who might have proofread something. Would
8 you say this was the lay people?

9 A I think that is the case.

10 Q These were members of the Texas Legislative Council
11 staff?

12 A Yes, sir.

13 Q Did you do any work with them? Did you work closely
14 with them?

15 A All right. In addition to yourself and the three
16 people you recited, were there any other staff
17 people belonging either to the staff of the Lieutenant-
18 Governor, the Attorney General or any of the other
19 members of the Legislative Redistricting Board, any
20 of the staff people, did they work closely with you
21 in drafting the House Plan, and, if so, can you give
22 us their names?

23 A Not as I recall. As I say, any number of people
24 would send us maps and ---

25 Q Let me rephrase my question. We have a couple of

names that cropped up. I think it was people associated with the Lieutenant-Governor, a Mr. Hooser and -- who is the other one?

MR. CUNNINGHAM: And Spellings.

Q (By Mr. Idar) And Spellings. Do you know those people?

A Yes, sir, I do.

Q Did they work with your staff in drafting the House Plan?

A I don't think they worked with the staff. I think they would probably send us maps or plans, or perhaps they would talk to Mr. Fetter or myself on occasions about that.

Q Well, you are familiar with the plan that the Board ultimately adopted?

A Yes, sir.

Q The House Plan?

A Yes, sir.

Q Was that plan drawn up by yourself and your staff?

A Yes, sir.

Q And do you know to what extent Hooser and Spellings had an input into that?

A No, sir, I don't. I know we did -- let me explain. Most of the work we did would be, you know, quite technical, when they would go in and, say, cut out

1 the people of this area. Take Wichita Falls or
2 Abilene, and things like that, places like that, you
3 know, take so many people, and generally what we
4 would do on a situation like that, we had a plan
5 adopted by the Legislature during the session, and
6 generally there was some agreement on what they had
7 done, and so in these areas we left it pretty well
8 as the Legislature adopted it.

9 Q Did you use the plan that was adopted during the
10 Regular Session as a sort of a kick-off point for
11 drafting yours?

12 A Only the areas that I mentioned, some of the areas
13 that I mentioned, like Abilene, Odessa, Wichita Falls,
14 are things that come to mind specifically right now.

15 Q All right. Going on to other staff members who might
16 have participated, do you recall whether or not any
17 of the staff members of the Attorney General's Office
18 participated to any large extent in the drafting of
19 the House Plan? And I might, while we are at it, to
20 save time, let me ask you both as to the House and
21 the Senate.

22 A Yes, sir, they participated to the extent of advising
23 us of, you know, drawing a constitutional bill. A
24 prime consideration was population, or the considera-
25 tion to try to hit it as closely as possible, and

1 regarding the splitting of county lines, particularly
2 with reference to the House situation, where you
3 couldn't -- not with specific county lines, but the
4 fact that you should keep them at a minimum.

5 Q Do you recall who were the members from the Attorney
6 General's staff who participated in this matter?

7 A I think Mr. Walker was in the office on occasion, and
8 Mr. McDaniel. I may be in error, but I think Mr.
9 Bailey.

10 Q All right. What about staff members -- let me
11 rephrase that. What about members of the staff
12 of, say, Mr. Calvert? Did any of his staff members
13 participate to any extent?

14 A Mr. Calvert's staff people?

15 Q Yes.

16 A No, sir, not that I know of.

17 Q What about Mr. Armstrong, the Land Commissioner?

18 A There were some people on his staff came over. I
19 know we gave them a whole lot of maps, you know,
20 blank maps, for them to work with, but I have no
21 idea who those people were. They would just come
22 over and get the maps. He would call me up and
23 say, "We want so many maps," and we would give them
24 to them.

25 Q Apparently, their participation was not to the extent

1 of that of Messer or Spellings or some of the other
2 people from the Attorney General's Office?

3 A They may have, you know, without going through us.
4 There was no requirement they go through us. They
5 could have talked to the Attorney General or
6 Lieutenant-Governor or the Speaker.

7 Q What about people associated with the Speaker of the
8 House, Mr. Matscher?

9 A Yes. I know there were several maps prepared, several
10 plans presented, or ideas put forth by Mr. Jones, who
11 is a Representative from out at Lubbock, who was
12 Chairman of the Redistricting Committee in the House
13 during the session. I know that Gus drew up several
14 plans himself, if I am not incorrect.

15 Q Would it be a fair statement -- I am trying to sum
16 this up, based on newspaper publicity, would it be
17 a fair statement that few, if any, of the recommenda-
18 tions made by the Speaker or people associated with
19 him were actually adopted or incorporated into the
20 plan that was actually adopted by the Board relating
21 to the House?

22 A I think that is a fair statement, yes, sir.

23 Q Getting back to what I started to ask you awhile ago,
24 you indicated to us that you did receive some type
25 of instructions or guidelines from the Legislative

1 Redistricting Board, acting as a Board. Was this
2 in the form of a motion, resolution, letter, or ---

3 A Just discussions up there through meetings, or maybe
4 after the meetings, just told us, "Get with it and
5 start drawing up some plans," and we drew, as I say,
6 any number of plans.

7 Q But did they give you some indication as to -- well,
8 let's get to the meat of the whole thing. Did the
9 Board at any time give you any guide as to whether
10 you should strive for multi-member districts in
11 the major counties, or for single-member districts?

12 A No, sir, they never did give us any instructions on
13 that.

14 Q The Board didn't instruct you on that point?

15 A No, sir.

16 Q Don't you consider that should have been a primary
17 policy decision that should have gone into the
18 formation of the Redistricting Plan?

19 A That was a policy decision for them to make, yes,
20 sir.

21 Q Would that policy decision be within your function,
22 or that of your staff?

23 A No, sir.

24 Q Or any other staff members of the different members
25 of the Board working on this project?

1 A No, sir.

2 Q As far as you are concerned, this is a policy decision
3 that had to be made by the Board itself?

4 A Yes, sir.

5 Q And you never did receive any specific instructions
6 from the Board, acting as a Board, on that particular
7 point?

8 A No, sir.

9 Q Did you ever receive any instructions from any
10 individual member of the Board?

11 A Only when -- and I don't know who received it,
12 received a map from Harris County, and said, "This
13 is the way it will be in Harris County."

14 Q Well, now, who said that?

15 A I have no idea.

16 Q You say you received a map from Harris County?

17 A Yes, sir.

18 Q Showing single-number districts?

19 A Yes, sir.

20 Q Do you know who drafted it?

21 A No, sir.

22 Q You don't know who you got it from?

23 A No, sir.

24 Q But was it from one of the members of the Board?

25 A Yes, sir, I am sure it was. Mr. Potter would probably

1 who actually gave him the map.

2 Q Well, my question is, who gave it to you?

3 A I think it was Mr. Potter.

4 Q Well, now, he was one of your staff members?

5 A Yes.

6 Q Did you determine from him who gave it to him?

7 A No, sir. I may have at the time, but I don't --
8 certainly don't recall now, sir.

9 Q Was the plan that was eventually adopted by the Board,
10 was it the same as this particular plan you are
11 talking about that Mr. Potter was given by somebody?

12 A Yes, sir, one of the final plans that was adopted,
13 the one that was adopted, we did receive.

14 Q In other words, as far as Harris County is concerned,
15 the plan that was originally adopted by the Legis-
16 lative Redistricting Board, that is, Harris County,
17 as far as that plan is concerned, was that substan-
18 tially the same as the plan that you say one of the
19 members of the Board turned over to Mr. Potter?

20 A Yes, sir, I think it was exactly.

21 Q All right. Now, did anything similar happen as to
22 any other counties in the State?

23 A No, sir.

24 Q Was that the only county in which you were handed a
25 map of the Redistricting proposal that was eventually

1 incorporated into the one adopted by the Board?

2 A No, sir, I think that -- I am trying to think.

3 Q Now about Dallas County? Were you ever told by the
4 Board or -- well, let me ---

5 A Wait a minute. I think maybe -- do you mean with
6 regard to major metropolitan districts, that they
7 were single-member districts?

8 Q Yes.

9 A No, we didn't get any other one. I was trying to
10 think if some of the other counties were cut up and
11 someone would send a map and say that this had been
12 agreed on, and cut it up this way, or use the House
13 Bill, or make this minor change or that change.

14 Q Let me ask you something -- let me ask you this:
15 What about Jefferson County? Did you receive a map
16 already drawn on that one?

17 A No, sir, we did not.

18 Q Now about Hidalgo County?

19 A No, sir, we did not.

20 Q El Paso?

21 A No.

22 Q Bexar?

23 A No, sir.

24 Q All right. Now, let me get back to what I started
25 a minute ago. It is my understanding that at no time

1 did you receive any sort of instructions, either from
2 the Legislative Redistricting Board or from any
3 individual member of the Board, giving you any
4 guidance as to whether you should strive for either
5 multi-member or single-member districts in the major
6 counties?

7 A I certainly don't recall any instructions to that
8 effect.

9 Q Well, now, the plan that was ultimately adopted by
10 the Board wound up with Harris County being the only
11 major county in the State with single-member dis-
12 tricts. The rest of them were thrown into multi-
13 member districts. Who made the policy decision to
14 do that? Was it yourself?

15 A No, sir.

16 Q Who did?

17 A I assume it was the Board acting.

18 Q You say you didn't receive any instructions from the
19 Board?

20 A I say the Board acting outside of my knowledge. We
21 received a map, and Mr. Potter said, if I recall
22 correctly, "This is the map," and evidently it was
23 what they wanted, because they had maps when it was
24 presented, and they did adopt it.

25 Q I thought you had told us that the map that Mr. Potter

1 gave you related only to Harris County, or am I
2 mistaken? Was it a map relating to the entire State?

3 A No, sir. If you are familiar with the maps, they
4 are, you know, a pretty good-sized map, and this was
5 a map of Harris County cut up into individual
6 districts.

7 Q So we have already established that as far as Harris
8 County was concerned, Mr. Potter did give you a map
9 that one of the members of the Board apparently
10 turned over to him, and as far as Harris County was
11 concerned, whatever that map incorporated was the
12 same thing that was incorporated in the final plan
13 that was adopted by the Board?

14 A Yes, sir.

15 Q But my question is as to the other major counties --
16 now, you have indicated -- well, my question was,
17 who made the policy decision that all of the other
18 major counties were to be allocated or placed into
19 multi-member districts? You say you didn't make it.
20 You say you assume the Board did, but, yet, you have
21 testified ---

22 A The Board did it when they adopted the bill or the
23 resolution, it seems to me.

24 Q Of course, that is after the whole thing was drawn.
25 My question precedes that. I am trying to determine,

1 when you got your staff together, you needed to know
2 whether you were going to single or multi-member
3 districts in Dallas, Bowie County, El Paso, the other
4 major counties; did you give your staff any instruc-
5 tions as to what to strive for?

6 A No, sir, because I didn't receive any instructions
7 other than those regarding Harris County.

8 Q Well, how did we wind up with a map that reflected
9 multi-member districts for every major county in
10 Texas except Harris County?

11 A The Board adopted it.

12 Q That's not my question.

13 A You asked how we wound up with ---

14 Q Well, let me back up. How did your staff determine
15 to come up with that sort of a plan?

16 A Well, if I recall correctly, we got the one on Harris
17 County cutting it up into individual districts, and
18 the rest of them were at large. That is the only
19 county they were going to set up in individual
20 districts.

21 Q Well, you still did not answer my question. How did
22 the staff determine that they would not cut up the
23 other major counties into individual districts?

24 A Because we didn't receive any -- we just did what we
25 were told. Now, when they told us to cut Harris

County up, we cut it up. When they said run the others at large, we didn't touch them.

Q All right. Now, you were told to run the others at large?

A Uh-huh.

Q Now, who told you that?

A I don't recall. I think it was just general consideration. I have no independent recollection.

Q So the best you can recollect is that they told you to cut up Harris, and then they told you to run the others at large?

A Yes, sir; and running them at large is no problem.

Q And you are assuming that the Board did that?

A I know they did that.

Q Were you present at a meeting of the Board where this was decided?

A When they adopted the resolution setting up the plan, yes, sir.

Q Again we are going back to the final plan that was adopted. I am trying to pin down -- now, we have been going at this all day, with the Attorney General this morning, and now with yourself. Somebody had to make the policy decision that the staff would act on ---

A Yes, sir.

1 Q ---as to whether to go for single or multi-member
2 districts in these major counties. Now, can you tell
3 us who made that decision?

4 A The Board made the decision.

5 Q At an official meeting of the Board?

6 A Yes, sir, the final ---

7 Q Were you present? Do you recall anybody making a
8 motion to that effect?

9 A When they signed the resolution.

10 Q Well, ---

11 MR. McDANIEL: May I try to help you out a
12 little bit?

13 MR. IDAR: Sure. I would like to get to
14 the bottom of this.

15 MR. McDANIEL: Well, I know you would, and
16 that's why I might interject this. When they drew
17 the plan for the State and put it into districts for
18 the House of Representatives, the first thing that
19 was done was to draw the plan for the State. Then,
20 you make a decision -- each metropolitan county is
21 by itself. Now, if you are not going to divide it
22 into single-member districts, then that is the end of
23 the matter right there. There is no further decision
24 to be made.

25 MR. IDAR: Except that ---

1 MR. McDANIEL: You just leave it like it
2 was drawn in the plan, with a certain number of
3 Representatives in that county. The only county that
4 it was determined to divide into single-member
5 districts was Harris County, and that was, of course,
6 the Board decided to do that, and sent instructions
7 for doing it. They simply did not do that as to the
8 other metropolitan counties.

9 MR. EDAN: All right. But the mere fact
10 that they made no decision as to the other metro-
11 politan counties, that means that they were, in effect,
12 deciding that those counties were to be given multi-
13 member districts?

14 MR. McDANIEL: That is correct.

15 MR. EDAN: All right. Now, what I am trying
16 to determine is, who made that decision? Do you have
17 any official minutes of the Board that might reflect
18 this?

19 MR. McDANIEL: The decision that you are
20 talking about, it was never made in the context of
21 choosing between multi and single-member districts.
22 That's what I am trying to drive at. It was made in
23 the context of deciding whether or not they would use
24 single-member districts in the other counties. They
25 decided not to, so they just left the overall State

1 plan drawn as it was, with Harris County divided up,
2 and with the others undivided.

3 MR. CUNNINGHAM: The problem I am having
4 is, who made this decision?

5 MR. McDANIEL: The Board did.

6 MR. CUNNINGHAM: When?

7 MR. McDANIEL: When they decided to make
8 the plan, adopted a plan that did not divide up the
9 metropolitan areas.

10 MR. IDAR: I am trying to get--now, a staff
11 that is going to be faced with drafting a redistrict-
12 ing plan for the entire State of Texas has to have
13 some instructions, some guidelines as to -- to follow
14 in drafting this plan. I know that the Board adopted
15 the ultimate plan. What I am trying to arrive at
16 is, at what time was the policy decision made that
17 every major county except Harris County was going to
18 be given multi-member districts?

19 (Further discussion was had off the
20 record, after which the proceedings
were resumed as follows:

21 A I probably assumed on my part, when they set up Harris
22 County this way and left the others alone, and I
23 assume the Board made the decision, and I think we
24 verified it when they did adopt the plan, but I have
25 no knowledge of it.

1 Q In other words, you are trying to tell us that the
2 Board instructed you to cut up only Harris County,
3 and you assume that they wanted to leave the other
4 major counties with multi-member districts?

5 A I think it is probably more than assuming. I think
6 they said that Harris County was the only one that
7 was going to be cut up, or something like that.

8 Q Now, I believe you indicated you are an attorney?

9 A Yes, sir.

10 Q I suppose that-- were you give any guidelines as
11 to the law as it would bear upon redistricting?

12 A In what respect?

13 Q Well, for example, were you given any guidelines as
14 to what you were supposed to do with relation to
15 minority groups in drafting this plan, the Blacks
16 and Mexican-Americans, for example, or any other
17 political groups? I believe in some circumstances
18 the Republican Party might enter into the political
19 element.

20 A No, sir, I don't think I received any instructions.

21 Q Were you familiar with some of the Court decisions,
22 particularly the Chaves case that was decided in
23 June, that speak when it comes to redistricting
24 plans that address themselves to the issue as to
25 whether -- as to how you are to handle minority

groups so that their voting strength will not be diluted or cancelled?

A Yes, sir, I am familiar with the case generally.

Q All right. Are you familiar with the law on this question, that any redistricting plan, whoever is drafting it, whoever is going to adopt it, must be sure that it is not the kind to minimize or dilute or cancel the voting strength of a significant minority group or political elements in the community?

A I think so, yes, sir.

Q Well, were you given any -- by the Board itself, were you given any cases or any Law Review articles bearing on this question?

A No, sir.

Q You were not? Are you fairly familiar with the State of Texas? Have you done any amount of traveling throughout the State?

A Yes, quite a bit.

Q Are you familiar with Bexar County?

A Yes, sir, I know generally about Bexar County.

Q Have you been in San Antonio?

A Oh, yes, sir.

Q Are you familiar with Dallas and Fort Worth?

A Yes, sir, I used to be. They are growing so fast --

so much now, that I am amazed at the constant growth of the cities.

Q Are you familiar with the fact that in Texas statewide, that the population is about twenty per cent Mexican-American?

A Yes, sir, generally; that is, you know, a round figure.

Q All right. And the Black population is, I think, roughly twelve to fifteen per cent?

A Yes, sir.

Q Are you further familiar with the fact that the Mexican-American, by and large, as a group, is concentrated in the southern portion of the State?

A Yes, sir.

Q And the Black as a group is concentrated largely in the eastern portion of the State?

A Yes, sir.

Q Are you further familiar with the fact that these two particular groups in some of our major cities have a tendency, on for whatever special reason, have a tendency to settle in certain sections of the city?

A Yes, sir, I think generally I know that.

Q Have you ever heard of the west side of San Antonio?

A Yes, sir, but I can't recall which is the west side and which is the east side. I don't recall which is

which.

Q But it has got a reputation as being, you might say, the Mexican portion of San Antonio? Have you heard of it in that context?

A I probably have.

Q Are you familiar, further, with the fact that in Dallas there are certain areas that are known to be Black areas?

A Yes, sir.

Q And you also have, I believe, a couple of significant areas that are known to be Mexican-American areas?

A Yes, sir.

Q West Dallas and Little Mexico; have you ever heard of them by those terms?

A Yes, sir.

Q And I believe the same thing would apply to Fort Worth. You have certain areas there where they are known to anybody residing there, or that is familiar with the City, to be Black areas?

A I'm sure that's true.

Q And the same thing with the Mexican-Americans?

A I am not too familiar with Tarrant County.

Q Have you ever heard of the south side of Stop Six in Fort Worth?

A No, sir, I haven't.

1 Q All right. Now, did you or your staff ever, in
2 drafting the plan under the instructions of this
3 Board, ever consider what the effect of this plan is
4 going to be on the Mexican-American and the Black
5 population in these particular areas that I have
6 been discussing?

7 A No, sir.

8 Q Were you the least bit concerned that you might wind
9 up with a plan that might dilute or minimize or
10 cancel out the voting strength of these particular
11 groups?

12 A I didn't know anything about where they were situated,
13 except generally, and ---

14 Q All right. Let me ask you this: Now, what statis-
15 tical information did you follow in drafting this
16 plan? Did you have the 1970 U.S. Census figures?

17 A Yes, sir.

18 Q You had them county by county?

19 A Yes, sir.

20 Q And you had them census tract by census tract?

21 A Yes, sir.

22 Q And block by block?

23 A No, sir.

24 Q Not block by block?

25 A No, sir.

1 Q But is it true that the 1970 census figures that you
2 had which went down to the level of the census tract
3 level, are you familiar with the fact that those
4 would give you a breakdown as between Whites and
5 Blacks?

6 A There is a publication out that does give that
7 information, yes, sir.

8 Q Well, wasn't this -- weren't these figures available
9 at the time you were working on this House Redis-
10 tricting Plan?

11 A Yes.

12 Q In other words, you knew, or you could have known if
13 you had wanted to, or if your staff wanted to take
14 the trouble, you could have plotted it as to each
15 major city, based on 1970 census data? Mr. Johnson,
16 your staff did have available, did it not, census
17 tract data for 1970 that would reflect the breakdown
18 between Whites and Blacks in each census tract
19 throughout the State of Texas?

20 A Yes, sir.

21 Q And if you had wanted to, you could have plotted this
22 information out and determined as to each county and
23 each individual city those areas that would be
24 predominantly Black in contrast to predominantly
25 White; is that true?

1 A Yes, sir.

2 Q Now, did you have similar data relating to the
3 Mexican-Americans?

4 A No, sir, we did not.

5 Q Do you know whether that data is available as of
6 today?

7 A I understand from talking to the Census Bureau that
8 it will be available the first part of the year on
9 computer tape.

10 Q Uh-huh.

11 A And I want to say the first part of the year, I think
12 the first quarter of the year, on computer tape.

13 Q You don't know exactly by when this might be avail-
14 able?

15 A I think it is February or March.

16 Q Will this be available for the entire State, or only
17 selected counties, or cities?

18 A I think that it will probably be available for the
19 entire State. I would have to check again. There
20 again, Mr. Potter will know. He worked with the ME &
21 ME on the computer tape run-out on that operation.

22 Q So, you did have census data for the entire State on
23 which you could have determined those tracts that
24 would be predominantly Black and predominantly White,
25 but the same data for the Mexican-American was not

1 available?

2 A Yes, sir, that is correct.

3 Q Now, you did have this kind of data for the Mexican-
4 American from the 1960 census; isn't that correct?

5 A Yes, sir.

6 Q Was there any effort made by your staff to update
7 the 1960 census data as to the Mexican-American to
8 see whether there were other sources of information
9 that might have updated some of this so that you
10 could have taken that into consideration in drafting
11 a redistricting plan for the House and Senate?

12 A No, sir.

13 Q Is it your position, then, that you and your staff
14 really didn't concern yourselves as to what might
15 be the ultimate effect on the minority groups of the
16 House Redistricting Plan that you were working on?

17 A That is correct.

18 Q Did the Board ever bring this concern to your atten-
19 tion?

20 A No, sir.

21 Q Were you ever told by the Board, as a Board, or by
22 any individual member of the Board, that you should
23 bear in mind the Mexican-American and the Black
24 minority groups throughout the State?

25 A No, sir.

1 Q Was that considered at all in the plan that was
2 drafted by your staff and ultimately adopted by the
3 Board?

4 A Drafted by my staff?

5 Q And adopted by the Board?

6 A I have no knowledge of what went into their minds, how
7 they adopted it, but our staff -- it was adopted by
8 the Board, yes, sir. I see what you mean. Yes, sir.

9 Q Did you, as related -- as regards, say, Dallas County
10 or Bexar County, did your staff make any studies to
11 see, based on the Black versus White breakdown, for
12 example, what would be the concentrations of those
13 two population groups in either county and what the
14 effect of single-member districting would be as to,
15 for example, how many Black districts might result
16 on a single-member district basis?

17 A I am trying to think. We worked on it during the
18 session, too. We did quite a bit for the individual
19 members during the session, and that may have -- we
20 may have done that during the session, but I don't
21 recall specifically. I didn't work with it during the
22 session.

23 Q Did your staff work with it?

24 A Yes, sir. Mr. Potter, there again, would probably
25 have ---

1 Q But as far as the work that you did for the Board,
2 you didn't do any work specifically along these lines?

3 A No, sir, I don't recall any. We may have had it
4 available as a result of previous work we had done,
5 but I certainly don't recall any, no, sir.

6 Q I think I asked you about Dallas County. I presume
7 that the same thing would apply to Bexar County, that
8 you didn't do any work there. I believe I asked you
9 about Dallas and Bexar in relation to the Black
10 population. I would like to address the same question
11 as to the Mexican-American population. Did you all,
12 as far as Bexar County is concerned, go to the trouble,
13 either by using 1960 census data, which is apparently
14 the last available for your purposes, did you go to
15 the trouble of trying to plot it out in San Antonio
16 to see what portion of that City or that County,
17 Bexar County, would be classed as a Mexican-American
18 area?

19 A I don't have any independent recollection that we
20 did. As I said, we may have done it for Senator
21 Bernal during the session, but I have no independent
22 recollection of doing it for the bill.

23 Q Do you recall the Board asking you to do that?

24 A No, sir.

25 Q They didn't ask you?

1 A No, sir -- I mean, yes, sir, they didn't ask me.

2 There is a double negative there.

3 Q They didn't ask you. Didn't it concern you as the
4 Director, and your staff, in drafting this plan and
5 as an attorney being familiar with the holding in
6 the Chavez case that you needed some guidance from
7 the Board as to what they wanted to do on this matter
8 as it related to the minority groups, the Mexican-
9 Americans and Blacks?

10 A As a staff, we did what we were told. We assumed
11 they had made the decisions. You had the Attorney
12 General on the Board, and a staff there. We did not
13 concern ourselves with what -- those things, just
14 drawing the lines, and that is a difficult job in
15 itself.

16 Q I think in the plan you ultimately wound up with,
17 besides in the major counties, there are several
18 counties that -- of which portions were cut off and
19 assigned to districts composed of other counties?

20 A Yes, sir, that is correct.

21 Q One of those was, I think, Hidalgo County, took a
22 little bit of that?

23 A Yes, sir.

24 Q And threw it into another area; and Jefferson County?

25 A And over in Cameron County, and Jefferson County is

split.

Q When you were working on Jefferson County, for example, were you familiar with the demographic characteristics of the county? Did you take any trouble to determine the demographic characteristics of the county as between Black and White?

A No, sir, we surely didn't.

Q Did you ever compare the final outcome of the plan that you proposed as regards Jefferson County? Did you go to the trouble of checking the demographic characteristics in trying to determine it was doing to the Black population by coming up with the plan that was suggested and adopted by the Board?

A No, sir.

Q Apparently, both yourself and your staff and the Legislative Redistricting Board, as a Board, or individual members of the Board, the existence of these minority groups in Texas were of little or no relevance; is that about right, in summing it up?

A No, sir, I don't think that. I think what we were interested in was population, the numbers.

Q They were interested in not coming up with too big deviations that might go against the one man, one vote rule?

A I think that they were concerned with drawing a

constitutional bill.

Q Yes, but to what extent did you consider the minority groups in drafting the plan?

A I didn't consider them top, side or bottom.

Q And you didn't receive any instructions from the Board to do that, either, did you?

A No, sir.

Q I think that's all.

MR. EDAR: I pass the witness.

CROSS EXAMINATION

Questions by Mr. Melkin:

Q Mr. Johnson, my name is Stuart Melkin, of Houston, and I am concerned with the Senate Redistricting. Now, could you tell us what your particular role was in that function?

A Just generally, you know, they gave us the map and said, "Draw it," and that's it.

Q Okay.

A And then draw the bill, or whatever you call the instrument, to comply, and proof it, and that's about it.

Q Okay. Were you given any specific instructions with regard to drawing of the Senate lines?

A No. If I recall correctly, the -- I am not trying

1 avoid this, but there again, Mr. Petter worked more
2 closely with it than I did, and he could probably
3 tell you more, but I think what we received was a
4 map, and we put this in bill form, or whatever the
5 bill is, whatever you call it, resolution the Board
6 adopted.

7 Q All right. And that map would have had all of the
8 Senatorial Districts drawn on it?

9 A Yes, sir.

10 Q And is that the map that ultimately became law, as
11 you know it?

12 A Yes, sir.

13 Q And so, then, actually, as opposed to the House
14 Redistricting, where you were concerned with numbers
15 and getting the district drawn, with this particular
16 map, it was already drawn for you?

17 A If I recall correctly, yes, sir, it was, and I -- I
18 think it was, yes, sir.

19 Q All right. And did you make any changes in it at
20 all, or simply put it in bill form?

21 A Let me back up again. I think that they came up and
22 said they were going to cut Harris County, you know,
23 and going to cut -- I do recall Tarrant County. They
24 were concerned about drawing the line across the
25 county.

Q Now, when you say "they," who are you speaking of?

A Mr. Potter was concerned about it, and he conferred with several people, and I don't know who it was, about where to draw the line, and it may have happened, also, with -- I don't -- I just don't know. I do recall Tarrant County, and that's the only one I do

recall. Q But as far as Harris County, your best recollection is that it was already prepared for you, and you simply

firmed it up into a bill?

A That is right.

Q Do you know who drew the map?

A No. I think -- Lord, I can't even think of his name

Q Would it be Burnett?

A No, Mr. Spellings, I think, or some people, probably, in his office probably drew it.

Q All right. Did you check it as far as its mathematical accuracy, or did you not even do that?

A No, sir, we did try and check the mathematical accuracy, and there may have been some changes as a result of that. I don't know.

Q Did you have an occasion to consider Harris County Districts, or any other districts -- Senate now -- with regard to the voting strength of minorities?

1 A No, sir, I did not.

2 Q Did you have presented to you any other Senate plans
3 that you could compare with the plan that was sent
4 to you, or did you know when you got that plan, that
5 was the plan, and that was it?

6 A That's about it.

7 Q That's it?

8 A We did, of course, have plans in the file that were
9 submitted by, I think, at the various hearings they
10 had, I think. Mr. Graves submitted a plan for Harris
11 County. I think Mr. Blythe submitted a plan. I know
12 Senator Huey was going to submit a Statewide plan,
13 but I don't recall whether we ever got that or not
14 from Senator Huey.

15 MR. BELKIN: For the record, I would like
16 to indicate that this is a document that I found in
17 one of the three files, Mr. McDaniel, that you
18 presented to the Plaintiffs this morning.

19 Q Mr. Johnson, could you-- have you ever seen this
20 document before?

21 A To tell you the truth, I don't have any independent
22 recollection of having seen it. It may have been ---

23 Q Would you simply read the title of that into the
24 record?

25 A "Proposed State Senate Districts, Harris County and

Q And if you will look at the map and simply indicate who it has been prepared by.

A It says "Census Tracts of Harris County, Texas, Prepared by Research Department of Houston Chamber of Commerce and Houston City Planning Commission."

Q And it is an orange folder; right?

A Yes, burnt orange.

Q Which contains -- let's see -- the first page, called Senatorial Districts; a map which you read off of, and then a page called "Justification," and then one called "Core District, South District, Southeast District," two pages, and "Northeast District," two pages, and "West District," two pages?

A Yes, sir.

Q Now, when you were ---

MR. McFARLANE: I presume you want that copied?

MR. McFARLANE: Yes. Let's put it over here with the other stuff.

Q When you were drawing your lines, either Senate or House, was one of the considerations -- you had at least an amorphous idea that you ought to take into account that of incumbent districts, districts represented at the time by incumbents?

A No, sir. When I did it?

1 Q Yes, sir.

2 A No, sir.

3 Q So, as I understand it, with regard to the House you
4 were concerned with numbers, and with regard to the
5 Senate, you really didn't have any concern; it was
6 already drawn for you?

7 A Well, except where we were cutting up counties, like
8 Tarrant County, to keep the population as equal as
9 possible.

10 Q All right. Now, did you have an occasion to review
11 the testimony taken before the Legislative Redistrict-
12 ing Board with regard to the Senate apportionment?

13 A Did I review it? I was there and heard it all.

14 Q And did you hear, Mr. Johnson, that a majority of
15 the discussion on the Senate revolved around
16 representation of Blacks in Harris County?

17 A Yes, sir, I think that was the gist of Mr. Graves'
18 testimony, and I think Mr. Slythe also.

19 Q And did you have an occasion when you saw the map
20 to examine the map for that type of inquiry?

21 A When I saw the Harris County?

22 Q That that was presented to you for Senate Districts;
23 you have heard all of the testimony about Black
24 representation and Black voting; did you have an
25 occasion to look at the map for that purpose?

1 A No, sir, I did not.

2 Q Are you familiar, as you have indicated you are with
3 all of the other cities, with Houston regarding
4 pockets of Black personnel in Houston?

5 A I only know that I have heard it. I am not familiar
6 with it. I have heard Sixth Ward.

7 Q Fifth Ward?

8 A Fifth Ward, or something like that.

9 Q Third Ward?

10 A I don't know the physical location of them, no, sir.

11 Q Is Mr. Fetter your subordinate?

12 A He is the Assistant Director of the Council, yes.

13 Q But, in fact, he really appeared, with regard to the
14 Senate, to be doing more negotiations with the Board?

15 A He did -- let me put it this way: He did most of the
16 work during the session, and he knows much more about
17 the physical lines and how to draw the physical lines
18 than I do in working with the metropolitan maps, et
19 cetera.

20 Q Did you have an occasion to have presented to you a
21 Senate Plan drawn by a Senate Apportionment Committee
22 of the Senate, of the State Senate?

23 A During the session?

24 Q They drew it during the session. It was not passed,
25 but there was a plan?

1 A I don't recall that. I recall they passed several
2 resolutions.

3 Q All right. That -- I think that Senator McKool had
4 one that was signed by Dallas people, and one from
5 Harris County signed by those people in the batch,
6 and Bexar County, and I think one -- during our prepar-
7 ations we did draw these off and did have them in a
8 file for the individual members of the Board.

9 Q What source material do you know of that either your
10 staff or Lieutenant-Governor Barnes' staff, or actually
11 the Counsel themselves, used? We know they had census
12 tracts. Did they have the old lines? Was that
13 another source of ---

14 A The old maps were available, yes, sir.

15 Q All right.

16 A I am sure they did have them.

17 Q Did they have any election results of past elections?

18 A Not from our staff, they did not, no, sir.

19 Q All right. Do you know if any of the staffs used that
20 as a factor?

21 A I have no knowledge of it. They may very well have
22 done that, but I don't know.

23 Q Was one of the considerations that went into the
24 drawing of the House lines that of highways?

25 A In some areas where you start cutting up a county -- I

1 know that in Odessa -- not Odessa -- yes, Odessa --
 2 Kator County -- that is correct; they tried to keep,
 3 you know, the City, and there is a district and a
 4 half, on a part out there, they tried to keep the City
 5 together and let the rural people be attached to rural
 6 areas.

7 Q All right. What are the factors, based on your
 8 expertise, what are the factors that are considered
 9 desirable in drawing district lines, besides numbers?

10 A Oh, I think if you could have lines of demarcation,
 11 as you mentioned, where people on one side will know
 12 they are in one district, and the people on the other
 13 side would know they are in the other district.

14 Q What about compactness in a district; is that
 15 considered a factor?

16 A I think it could be considered to an extent.

17 Q What about community of interests of people in the
 18 district?

19 A I think that, to the extent you can within that
 20 numerical nicety that you are trying to consider, that
 21 you should consider that.

22 Q So that if there are several ways to draw a district,
 23 all of which had the same numerical deviation, if
 24 you could take into account those factors and one
 25 plan did, and one plan didn't, you should opt for the

1 one that did?

2 A Yes, I think so, if you are in a position to do that,

3 yes, sir.

4 Q Would you say, sir, -- let me have this marked.

5 (Said instrument was marked for
6 identification as Plaintiffs'
Exhibit No. 2.

7 Q Mr. Johnson, taking a look at what has been marked
8 as Plaintiffs' Exhibit 2 for identification, which
9 is a newspaper clipping from the Houston Post,
10 October 16, 1971, Page 8-A, and which purports to
11 be a diagram of the Senate Districts as promulgated
12 by the Committee, if this is a correct representa-
13 tion, would you comment as to the compactness
14 consideration of, for instance, District 13?

15 A It is bigger than the other districts, and it is --
16 Oh, I think, as you say, that it is a question of
17 comparison. When compared to a district that runs
18 from San Antonio to Bexar County, it is not big at
19 all.

20 Q But considering the other districts?

21 A Yes, sir, it is larger than the other districts;
22 there is no doubt about that.

23 Q All right. And would you say there is any rational
24 basis for making a district that way?

25 A Yes, sir, I think it is on the basis of population.

Q All right. But again, dealing with our plastic model, if there are many ways to draw a district which would be numerically comparable, would 13 be an undesirable district as presently drawn?

A There again, I hesitate to say, because I don't know. As you point out, things like community of interests and these other things, I am not familiar enough with the county to say, so taking all of it into consideration, if compactness is the only thing you consider, it is not compact, and you probably could draw it more compact if you don't take into consideration these other things.

Q All right. And if I were to represent to you that in District 13 that you see indicated there, that there is a combination of silk stocking voters in River Oaks and Black minority group members, would you say that that would fail, as far as community of interests?

A I would certainly think so, yes, sir.

Q I have nothing else.

CROSS EXAMINATION

Questions by Mr. Eason:

Q Mr. Johnson, I am Nathan Eason from San Antonio,--I believe you know me -- and I represent Van Archer, et al. Mr. Archer is the Republican Chairman of Bexar

County. And, of course, I don't want to be repetitious in these questions, but I would like to point out and ask a few questions concerning the Legislative Redistricting there, and specifically the Senatorial Redistricting. Now, in order to -- I believe you testified, Mr. Johnson, that, by and large, the Senatorial Redistricting Plan and Map was given to you and was approved, almost no changes made, and given back to the Board; is that correct?

A Yes, sir, if I recall correctly.

Q Now, then, your group did not consider, then, the various minorities, whether they be ethnic, racial or political, in regard to the -- specifically the Senatorial Redistricting; is that correct?

A That is correct.

Q Are you familiar with District 21, Senatorial?

A If you can show me the map. I may not be by number.

Q (Handing map to the witness.)

A Yes, sir, I recall that.

Q I believe you previously testified that you had some knowledge concerning the metropolitan areas of Texas. Are you familiar with -- you mentioned something about the west side awhile ago. Are you familiar with the north side of Bexar County or the northeast side of San Antonio?

1 A Just that I have been around the Loop.

2 Q You go in that way on the highway, don't you?

3 A Yes, sir.

4 Q Well, for your information, the northeast part of
5 San Antonio has a Republican justice of the peace
6 and a Republican county commissioner.

7 A Is that Bob Strickland?

8 Q Yes. I am sure you know Mr. Strickland from previous
9 days in the Legislature. He is now a Republican.
10 Bearing in mind the common interests which should be
11 followed, and, of course, the tract is contiguous
12 by going around Districts 19 and 26, do you have
13 an opinion on the compactness of District 21? It
14 takes in Zapata, Starr, Jim Hogg, Duval, Webb, and
15 swings around 19 and 26, and takes in the north part
16 of Bexar County and the northeast part of San
17 Antonio. Do you have an opinion concerning the
18 compactness of this?

19 A No, sir ---sumpered to what? There is no doubt but
20 what it could have been made more compact.

21 Q But again, you did accept the plan as submitted to
22 you by the Board?

23 A You bet.

24 Q Was this your direction -- I mean, simply to -- were
25 you directed or instructed to make any changes in that,

or what instructions, if any, were you given?

A If I recall correctly, just put it in the bill form and draw the accompanying maps with it.

Q In other words, yours was strictly a mechanical or procedural thing, and you were to perform no changes or even opinions concerning it; is that correct?

A No, sir.

Q "No, sir," you were not?

A That is correct.

Q And you were not to weigh the ethnic, political or racial factors, or anything of that nature?

A No, sir.

Q You previously stated, I believe, that you did not weigh -- strike that. You did take into consideration, I think, ethnic and racial situations in regard to the legislative redistricting where they were apparent to you. I am not talking about Bexar County; I am talking about in the State as a whole; is this correct?

A No, sir, I don't think so.

Q You did not take that into consideration?

A No, sir.

Q And, also, would it be fair to say you did not take into consideration any political aspects, whether it be Republican or Democrat, or anything like that?

1 A That is correct. That is a correct statement.

2 Q Do you have in your office any other Senatorial
3 Redistricting Plans or Maps other than the one that
4 was formulated here and passed by the Redistricting
5 Board?

6 A I am sure we do, yes, sir.

7 Q Are those -- they are under your jurisdiction and
8 control?

9 A Yes, sir.

10 Q Would they be open for our inspection, if we want to
11 see them?

12 A Anything we have, yes, sir.

13 Q And we can come by your office and examine those?

14 A Yes, sir.

15 Q Were you approached by any members of the State Senate
16 from Bernal County concerning the redistricting of --
17 Oh, 19, 26 or 21?

18 A I believe I talked to Senator Bernal once or twice
19 about it before we had had any plans, and all. I was
20 approached to that extent.

21 Q How about Senator Kochmann?

22 A I may have talked to Glenn, Senator Kochmann, one
23 time, but I think, there again, it was before we got
24 any plans on the, or any maps on the thing.

25 Q How about Senator Connally?

1 A I am quite sure I haven't talked to Senator Connally
2 at all about it.

3 Q Senator Connally is probably not going to run again
4 for the Senate?

5 A That's what I understand, yes, sir.

6 Q Do you know whether or not you have any correspondence
7 in your files, either from Senators Bernal, Kothmann
8 or Connally, or their constituents, concerning the
9 redistricting of 19, 21 and 26?

10 A I think there are some letters from Senator Bernal,
11 and perhaps Senator Kothmann.

12 Q And those, too, are in your office?

13 A Yes, sir.

14 Q As far as you know?

15 A Yes, sir.

16 Q And would be open to inspection of the various persons
17 here?

18 A Yes, sir.

19 Q I am going to hand you a letter here -- I haven't even
20 read it yet -- directed to the Legislative Redistrict-
21 ing Board, signed by Senator Bernal, and ask you whether
22 or not you have seen it?

23 A I think this is the statement that Senator Kothmann
24 made to the Redistricting Board and filed with us, and
25 probably sent me a copy.

1 MR. KASCH: Could we have this marked for
2 identification, please, sir?

3 (Said instrument was marked for
4 identification as Exhibit F-2A-1.)

5 Q (By Mr. Kasch) For the record, this is a letter
6 written to the Legislative Redistricting Board of
7 Texas, addressed to each one of the individual members,
8 on the Senate letterhead of Joe J. Bernal, District
9 26. It consists of -- it is dated August 24, 1971.

10 It consists of three pages in the original letter,
11 together with a reply, a map of Bexar County, a
12 second map of Bexar County, a copy of a newspaper
13 article by Hesper Diehl, from the San Antonio News,
14 dated Thursday, June 3, 1971, another map marked
15 Exhibit "D," showing Mr. Bernal's and Mr. Rothmann's
16 districts in Bexar County, another page marked Exhibit
17 "E," on the letterhead of the Attorney General of
18 Texas, dated June 4, 1971, containing one, two, three,
19 four pages, signed Crawford C. Martin, Attorney General,
20 with an addendum thereto showing approval of the
21 Opinion Committee, and another page, Exhibit "F,"
22 showing a resolution for Senatorial District 19.

23 MR. LIMA: Let me ask you a question. Are
24 you just marking that?

25 MR. KASCH: Just marking it for identification.

1 and not offering it.

2 MR. IDAR: You will want it attached to the
3 deposition, won't you?

4 MR. EASON: Well, I haven't even finished
5 reading it. I believe that's all of the questions I
6 have at this time.

7
8 CROSS EXAMINATION

9 Questions by Mr. Greenberg:

10 Q Mr. Johnson, I am Robert Greenberg, and I represent
11 the Plaintiffs in the Marriott case, and I have a few
12 questions. Could you tell us from the inception of
13 the Legislative Redistricting Board until the adoption
14 of the House Plan approximately how many meetings that
15 you had with Mr. Spellings of Lieutenant-Governor
16 Barnes' Office, with respect to either the House or
17 the Senate Plans?

18 A I would say fifteen or twenty. That is a ball park
19 figure.

20 Q Now, Mr. Johnson, were these meetings with Mr. Spellings necessitated because of administrative needs in
21 exchanging information to draw districts, or were you
22 and Mr. Spellings making judgment decisions as to what
23 was going to be drawn?

24 A Well, whether or not-- you know, they would call us
25

and say, "Draw up some plans," you know. Just as a point of departure, I guess we would be making judgment decisions, those that we would put together and wouldn't put together, or counties, but most of it was administrative, what have they decided, and what are they going to do with this, and how do you cut this up, and this, that and the other.

Q Did you meet with Commissioner Armstrong?

A Bob was in the office -- Commissioner Armstrong was in the office two or three times, and I talked to him on the phone several times, yes, sir.

Q Now, Mr. Johnson, during the meetings with, let's say, for instance, Commissioner Armstrong, did Commissioner Armstrong tell you in any of those meetings or on the phone, "be sure and draw a certain district this way, or that way"? Was this the nature of those conversations, or was it more general, or what was it?

A Very general. I don't think he at any time told us to draw any lines any place, or told us to draw any lines any place. He may have discussed it with somebody else on the staff -- Mr. Potter.

Q Now, would this also be true as to the other members of the Board that you talked to individually?

A Yes, sir.

Q None of them told you to specifically draw a Senate

1 -signed line or a Senate District in a certain manner, or
2 a House District in a certain manner?

3 A They never told me to do that. There again, they
4 may have talked to Mr. Potter.

5 Q Did you conceive your job as Director of the Legisla-
6 tive Council to be one of administration and a map-
7 drawer?

8 A Yes, sir.

9 Q And was it your agency that was given the primary
10 function of checking out population figures within
11 certain lines that were drawn in a computer against
12 a particular deviation?

13 A I don't know if -- I don't believe -- we didn't have
14 any deviations set. We would check the populations.

15 Q Did you do that by computer?

16 A Yes, both ways, by hand, and also by the MRM
17 computer.

18 Q Now, with respect, Mr. Johnson, to your service
19 prior to become head of the Legislative Council,
20 you were an elected State Representative from Dallas
21 County, were you not?

22 A That is correct.

23 Q How many years?

24 A Four terms.

25 Q During those four terms as an elected Representative

1 in Dallas County, did you run at large, or a single-
2 member district, or how did you run?

3 A At large in Dallas County.

4 Q During the time that you were a member of the House
5 from Dallas County, were there any other members of
6 any minority groups in that delegation?

7 A No racial minority groups or political minority
8 group. In fact, at that time, they were a political
9 majority group from Dallas County, Republican
10 Representatives from Dallas County.

11 Q Have you kept up particularly since you were a former
12 legislator from Dallas County on Dallas County per
13 se, as opposed to your present county where you live
14 now, Travis County?

15 A No. Of course, I know more about Travis County than
16 I do about Dallas, because of the tremendous growth
17 of Dallas.

18 Q All right. Now, you have been asked questions here
19 today about district lines, both the House and Senate,
20 with regard to Bexar County, Dallas County and Harris
21 County, El Paso and Tarrant Counties. I don't think
22 you have been asked any questions with regard to
23 Travis County, but if I were to ask you those same
24 questions, would I get the same answers as they
25 reflect to Travis County, with the exception that you

1 had no single-member district plan in the House
2 presented to you? Did you have particular State
3 Senators, or some State Senator from Travis County
4 that submitted a plan for the Senate District here?

5 A: No, sir, I don't recall.

6 Q: Did any of the House members from Travis County
7 contact you with regard to districts in Travis
8 County?

9 A: No, sir, except to the extent that we received the
10 statewide plans. I think Mr. Blythe, Representative
11 Blythe, submitted one that was statewide with
12 individual districts in all of the -- throughout the
13 State.

14 Q: Let us go back and try to understand something, Mr.
15 Johnson. Did you conceive your duty as head of the
16 Legislative Council in the work of the Legislative
17 Redistricting Board to consider the guidelines that
18 the Supreme Court laid down in the Chavez and other
19 cases, or did you consider your duty strictly
20 administrative, a scrivener's duty, and your concern
21 with population?

22 MR. RICHARDS: I would object. I don't
23 believe an administrator and a scrivener are quite
24 the same thing.

25 MR. GREENBERG: Well, you can ask your

Questions the way you want them, and I will ask mine the way I want, unless you don't understand the question, Mr. Johnson.

A I think I understand the question. I am sensitive that we did what we were told to do, and that's what we tried to do, and that's about it.

Q Thank you. Now, Mr. LUNA: I may have one or two, if the Plaintiffs are through. Are all of the Plaintiffs through?

MR. CHURCHMAN: Well, we are going around the table.

MR. RICHARDS: Oh, I thought you were going to Defendants, and I thought before the Defendants started questioning, you might want to get all of the Plaintiffs out of the way. I would just as soon come in behind you.

MR. CHURCHMAN: I will be in behind you, and you behind him.

MR. LUNA: You all go ahead.

MR. CHURCHMAN: No, go ahead, and then I will be behind you, and David behind me.

Q Now, would I get the opportunity to ask questions?

MR. CHURCHMAN: Yes, you will have the opportunity to ask questions.

CROSS EXAMINATION

Questions by Mr. Lums:

Q Mr. Johnson, my name is Earl Lums, and I represent Roy Orr, State Democratic Chairman, and Chairman of the State Democratic Executive Committee in this case, one of the Defendants. Are you familiar with areas such as Fredericksburg, New Braunfels and Seguin; do you know where those places are?

A Yes, sir.

Q Is there any particular type of population that comes to your mind in regard to those areas?

A German.

Q German. All right. Insofar as those areas are concerned, were you told to make any effort with respect to giving or taking away from the German people any of their representation?

A No, sir.

Q Back to Dallas County, where you served eight years as a member of the Legislature, is it -- or are you aware as to whether or not in Dallas County, where -- first, the members have always been elected at large in the House Plan, have they not?

A Yes, sir.

Q Are you aware that in the legislative process in Dallas County that we have elected more than once

1 Blacks to the legislature?

2 A Yes, sir, I am familiar with that.

3 Q Have we also, and do we now have serving as a member
4 of the Legislature a Greek?

5 A Yes, sir.

6 Q Do we have serving at least three or four Catholics?

7 A Yes, sir.

8 Q Do you know that we also have serving from Dallas
9 County a Jew?

10 A Yes, sir.

11 Q Now, are those people that we have talked about, with
12 the exception of one, on the House Delegation,
13 elected on the Democratic ticket?

14 A Yes, sir.

15 Q Now, there is at this time one Republican serving
16 as a member of the delegation, is there not?

17 A Yes, sir.

18 Q Mr. Johnson, in 1962, what were you doing?

19 A Practising law in Dallas.

20 Q Were you in the legislature in 1962?

21 A Yes, sir.

22 Q Who won the -- with respect to parties -- the
23 legislative House seats in Dallas County in the
24 1962 election; do you recall?

25 A Yes, sir. There were six Republicans and three

1 Democrats.

2 Q Six Republicans and three Democrats?

3 A Yes, sir.

4 Q Now, right after -- a few years after the war, along
5 in 1949 or 1950, was there also one Republican
6 elected from Dallas County to the House of Repre-
7 sentatives?

8 A Yes, sir, there was.

9 Q And then ---

10 MR. RICHARDS: I am sorry. Who was that?

11 Q (By Mr. Lamm) Was it Ed Dicker?

12 A Ed Dicker.

13 Q Then, subsequent to those six that were elected in
14 1962, was there in a special election a Republican
15 elected thereafter?

16 A To the Legislature?

17 Q To the Legislature; do you remember that?

18 A No.

19 Q Do you remember John Lowrance and Doug Bergman in a
20 race?

21 A Yes, but that was when Judge Bob Hughes and I
22 resigned the ---

23 Q Do you remember John Lowrance being elected first
24 in a special election?

25 A He sure was. That's right.

Q And then later was defeated in a regular election?

A That's right.

Q Now, after -- now, we have come, insofar as you know, up through that point, from the days of the Civil War, these are the only Republicans that have been elected in Dallas County, are they not?

A I am not familiar from the days of the Civil War.

Q As long as you can remember?

A Well, with the exception of some of the local offices there.

Q We are talking about the legislature now. At the present time, then, you have told us that Representative Ignish is serving as a member of the House of Representatives, having been elected on the Republican ticket; is that right?

A That's right.

Q Now, that is nine that we have counted up so far, members of the House, that have been elected, nine different people, at least since World War II; is that right?

A There were more than that.

Q On the Republican ticket?

A There were more than that. When Judge Hughes and I resigned, they had a special election to fill our places, and Republicans were elected there.

1 Q Republicans were elected there?

2 A Yes, sir. They didn't ever serve in any session of
3 the Legislature, but they were elected.

4 Q So maybe as many as ten or eleven. Now, in politics,
5 has it been your experience, particularly in Dallas
6 County, that if a politician is indicted or charged
7 with some serious crime, it has political overtones?

8 A Yes, sir, but let the record reflect I haven't been
9 indicted.

10 Q Let's come to the nine to eleven members of the
11 Republican Party. Are you aware that at least two
12 of them have been charged with violations of the
13 Criminal Law?

14 A I recall one. I don't recall but one.

15 Q You don't recall but one. Now, on the other hand,
16 since you have been in the Legislature, or since you
17 have ceased to be in the Legislature as a member,
18 have you continued to be generally familiar with
19 politics in Dallas County?

20 A Generally, yes, sir.

21 Q Would it be fair to say that the Black population
22 predominantly supports the Democratic ticket?

23 A Yes, sir.

24 Q And, although we have had over the period of years,
25 as you pointed out, as many as perhaps eleven

1 Q Republicans elected to the Legislature, there has
2 never been a Black elected on the Republican ticket,
3 has there, to the legislature?

4 A No, sir.

5 Q In North Dallas, are you familiar with that area
6 generally?

7 A Yes, sir.

8 Q Would it be fair to say that perhaps the largest
9 Jewish population is in North Dallas?

10 A Yes, sir, I think it is.

11 Q Now, based on your experience in politics, with the
12 Legislative Council and knowledge of Dallas County,
13 do you know of anybody in Dallas County who has ever
14 been denied the right to register to vote?

15 A No, sir.

16 Q Do you know of anybody who has not had access to the
17 political processes in any other way, including
18 through voting?

19 A No, sir.

20 Q Mr. Johnson, insofar as you know, in the plan for the
21 House of Representatives, the large plan in Dallas
22 County, is there any invidious discrimination against
23 any group, whether it be student group, ethnic, reli-
24 gious or otherwise?

25 A As far as I know?

1 Q Yes, sir.

2 A No, sir.

3 Q And you are more than fairly familiar with politics
4 in Dallas County, aren't you?

5 A Yes, sir, I am pretty familiar with them.

6 Q Do you know of any member of the Legislature named
7 Dick Reed?

8 A Yes, sir, I sure do.

9 Q Would it be fair to say that Dick Reed is, if we
10 label Democrats as Liberal or Conservative, might
11 fairly be regarded as a Liberal Democrat?

12 A Yes, sir.

13 Q Now, do we have others on that delegation that would
14 be regarded as middle of the road Democrats?

15 A Yes, sir.

16 Q Some as Conservatives?

17 A You bet.

18 Q And even one as a Republican?

19 A I wouldn't say "even one" is a Republican. I said
20 one.

21 Q One is a Republican?

22 A Yes.

23 Q There was more than one in 1962?

24 A Yes, sir.

25 MR. GREENBERG: Pass the witness.

MR. CUMMINGS: Mr. Johnson, when you say --

MR. RICHARDS: Did you have any questions, Sam?

MR. SCHAEFER: No, sir.

CROSS EXAMINATION

Questions by Mr. Cummings:

Q Mr. Johnson, when you served in the Legislature from 1933 to 1961 or '63, were there any Blacks on the ticket then?

A No, sir.

Q Were there any Blacks serving in the Legislature?

A No, sir.

Q Okay. I think you indicated that you are also familiar with politics from '49 up until '62 in Dallas County; is that right?

A Just generally.

Q Okay. Well, during that period of time were there any Blacks that served in the Legislature?

A I am sure there were not.

Q Do you know when the first Black was elected to the Legislature?

A '65 or '67, one of those two years.

Q Okay. And do you know whether or not there had been

any Blacks that had run or had made a legislative race prior to '65 on either the Democratic or Republican ticket?

A I do not recall any, no, sir.

Q You don't recall any?

A I don't think there were.

Q You are not sure whether or not there may have been one or not?

A Making a race?

Q Uh-huh.

A I don't recall any making a race, no, sir.

Q Okay. But you are not saying that there may not have been one?

A That is correct.

Q Okay. Do you know whether or not there have been any Blacks that have run on the Republican ticket?

A I know of one, I believe.

Q And do you know when that was?

A Either last year or two years ago. Mr. Kerwin, I believe his name was.

Q Now, I believe when you ran for the Legislature in 1933 to 1943, that you were then quite -- you were familiar with the politics in Dallas County then, weren't you?

A Yes, sir.

Q You were familiar with the costs that a candidate incurred in running for the Legislature countywide?

A Yes, sir.

Q And it was at a considerable cost, wasn't it, Mr. Johnson?

A Depending upon the race, yes, sir.

Q And if you were not a member of a ticket, whether it was nine, eleven or fifteen members, you did not stand a chance of being elected; isn't that true, Mr. Johnson?

A I was elected, and I wasn't a member of a ticket.

Q You were an exception?

A Yes, sir.

Q Okay. And you were one of the few exceptions that have been elected in the State Legislature, if they were not on the Democratic ticket; isn't that true?

A Yes, sir.

Q Okay. Now, I believe Mr. Potter is a subordinate of yours; isn't that true?

A Yes, sir.

Q And that he is responsible to you to whatever his acts are with respect to the Legislative Council; isn't that correct, sir?

A That's right.

Q Okay. And he works under your direct supervision?

A No; we work together.

Q Well, you are his boss?

A Well, yes, sir, that's right.

Q Okay. And he is also responsible to the Texas Redistricting Board?

A Yes, sir.

Q Through you?

A Yes, sir.

Q Okay. So that whatever Mr. Potter did, he was doing under your direct supervision and that of the Texas Redistricting Board?

A Right.

Q All right, sir. Okay. Now, you made a statement that no Board action, as a Board, gave you instructions what counties should be multi-member; is that true, sir?

A Yes, except to the extent they sent us the map, or gave Mr. Potter the map of Harris County, and that was it.

Q Well, as I to understand that what actually happened is, you drew the other counties except for the metropolitan areas; is that correct, sir?

A Yes. What you do is, you draw the others, and you assign to many, starting out with Harris 23, and then Dallas 19, and then determine which way they are going

to go. Do you see what I mean?

Q Yes.

A You see, I assign them to the county, and if they say cut them up, we will cut them up, and if they don't, we don't.

Q You assigned 18 to Dallas, and you assigned so many to Harris County, and a Board member -- one of the Texas Redistricting Board members sent you a plan for Harris County, and said, "This is Harris County".

A Yes, sir.

Q And because you did not receive a plan telling you that Tarrant County or Dallas County or Bexar County or El Paso County should be cut in a certain district, you didn't do anything?

A That's right.

Q And that when you brought it up here to General Martin, you had already submitted it to two other Board members; is that correct, sir?

A No, sir, I did not submit it to any of them.

Q Was General Martin the first person that you submitted the plan to?

A No, sir. I don't specifically recall submitting it to General Martin. I think I sent it over here, or something like that.

Q Do you know who you sent it over with, sir?

1 A No, sir, I don't.

2 Q Well, --

3 A It could have been Mr. McDaniel or Mr. Walker, or
4 any number.

5 Q Well, was General Martin the first person that you
6 showed the plan to in its final stages or final
7 design?

8 MR. CUNRY: On the Board?

9 MR. CUMMINGHAM: Yes, of the Texas Redistricting Board.

10 A I honestly don't know, sir. There again, if you
11 talked to Mr. Potter, he may have some independent
12 recollection.

13 Q Did you or any member of your staff ever draw a
14 single-member district for Dallas County, Texas?

15 A No, sir.

16 Q Did you ever consider drawing a single-member district
17 for Dallas County, Texas?

18 A Yes, sir.

19 Q Okay. When?

20 A All during the proceedings.

21 Q I am talking about right -- I am not concerned now
22 with the session. I am talking about the five meetings
23 that were held by the Texas Redistricting Board.

24 A You mean did we ever have a specific plan or direction
25

or idea to draw one?

Q Right. For Dallas County, Texas.

A No, sir. When I said we considered it, we considered the possibility and how much work had to go into it to draw it, and that's it.

Q Okay. Now, with respect to Bexar County, did you ever consider a single-member district for Bexar County?

A No, sir.

Q Did you ever consider a single-member district for Tarrant County?

A No, sir.

Q Did you ever consider a single-member district for El Paso County?

A No, sir.

Q On any of the large metropolitan counties, other than Harris County?

A No, sir.

Q You mentioned that there was a publication out that could reflect the breakdown of Whites and Blacks in each of the major metropolitan centers. What is that publication?

A It is one of the Census Bureau publications. It has a number and name, and I don't have it. We have them at the office, and I will be glad to get that information for you.

1 MR. RICHARDS: Could we stop by there today
2 or tomorrow, and could we pick up a copy of it, or
3 make a photocopy?

4 A If you will give me your name and address, I will be
5 glad to send you all a copy.

6 MR. RICHARDS: Well, we will be here to-
7 morrow, and if you will make photocopies, we will be
8 glad to stop by and pick them up.

9 A I will drop them over to you, if you will tell me how
10 many you want.

11 MR. RICHARDS: How many do we want?

12 (Thereupon, a discussion was had off
13 the record, after which the
14 proceedings were resumed as follows:

15 MR. McDANIEL: Make twenty, and that's enough
16 for everybody that's here.

17 Q (By Mr. Cunningham) Mr. Johnson, with respect to the
18 Blacks in Dallas County, do you know where the majority
19 of the Blacks are located?

20 A Yes, sir, I think.

21 Q Well, where are they located?

22 A South Dallas.

23 Q South Oak Cliff?

24 A Yes, sir, South Oak Cliff and West Dallas.

25 Q And West Dallas in what is now known as Singing Hills?

A Yes, sir.

Q Singing Hills off of Ledbetter and off up in there?

A And Lancaster.

Q Do you know what the approximate population of Blacks in Dallas County is now?

A No, sir.

Q Okay. You don't have any idea?

A No, sir. I don't.

Q That's all.

REDIRECT EXAMINATION

Questions by Mr. Richards:

Q I will try not to be repetitious, Mr. Johnson, because I missed a portion of your earlier deposition. How long have you been down here now with the Legislative Council?

A Since September, 1963.

Q Since '63. Did you -- I guess you played a comparable role in the 1963 Legislative Redistricting?

A I took a much greater part than I did this time.

Q A much greater part. I have seen figures that were on the number of Blacks who have served in the Texas Legislature I think that were produced during the course of the litigation that followed the '63 Redistricting. Was that information available through your Service? Do you know?

1 A We may have gotten it together, Mr. Richards. I
2 don't know, but we could probably get it to you if
3 you need it.

4 Q And without plowing the ground that has been plowed,
5 if I can avoid it, I take it your testimony has been
6 that at least your role in the decision to treat the
7 metropolitan areas as countywide is summarized by
8 saying that you received no instructions one way or
9 the other from any member of the Redistricting Board
10 as regards the treatment of Dallas, Tarrant and Bexar
11 Counties; is that correct?

12 A That is correct.

13 Q Did you ever receive a request to draw a plan from
14 any member of the Board, to draw Dallas County into
15 something between individual districts and countywide,
16 as you recall?

17 A Yeah, there may have been. I recall that Branton --
18 there was something in the newspaper that Branton
19 and Mutscher discussed it, and we may have done some-
20 thing for Mr. Mutscher along that line, but, as I say,
21 I don't have any independent recollection. I can sure
22 check and find out by talking to Mr. Potter.

23 Q At least, you have no recollection of receiving such
24 a request from Lieutenant-Governor Barnes or any member
25 of his staff?

1 A That is correct.

2 Q If any such request was made, it would have been only,
3 so far as you recall it, at the request of Speaker
4 Harboer?

5 A That is correct.

6 Q And I take it from what I heard as I came in that in
7 formulating plans for legislative districts, you
8 received no instructions to attempt to verify that the
9 plans did not discriminate against racial minorities;
10 is that correct?

11 A No, sir -- yes, sir, that is correct.

12 Q That is correct. You say, Bob, when you initially ran
13 for the Legislature, you were not on what is called
14 the downtown ticket; is that correct?

15 A That is correct.

16 Q Were you later included on the ticket?

17 A I think they did. They couldn't beat me, so they
18 joined me.

19 Q Do you recall the last contested Democratic Primary

20 race you made in Dallas County?

21 A Yes, sir.

22 Q When would that have been?

23 A In 1940.

24 Q 1940. Who was your opponent?

25 A I think Carroll Jernigan.

Q Do you have any idea what that legislative race cost in terms of either your own expenditures or expenditures of others on your behalf?

A No. I can just recall that my first race I think I spent \$800.00, and my second race, I think I spent twenty-two hundred, and I don't think I had an opponent that third time. That's about all I can recall.

Q The Dallas County legislative contingent, at least in recent years, has been -- and by that I guess the last three legislative sessions, -- has been dominated, has it not, essentially by what go under the name of Conservative Democrats?

A Yes, sir.

Q And are you aware that there has come to be in Dallas in recent years a Conservative Democratic slate that is -- runs as such in the Democratic Primary?

A I know that from the paper and what not, Dave. I think that's true.

Q When was the first Republican Primary, if you recall, held in Dallas County?

A Lord, I don't know. They used to nominate by convention or by appointment or something. I don't recall.

Q You are aware, I take it, that -- strike that. That's all right. Mr. Luna has sort of made you an expert. I want to try one on you, quoting from Bo Byers of

APR 1946

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Houston. Do you know Mr. Byers of the Houston Chronicle?

A Yes, sir, I do know him.

Q Mr. Byers in an article on October 10, 1971, of this year, stated in a column in the Houston Chronicle, referring to Dallas, Tarrant and Tarrant Counties, "Conservative Democrats have dominated election of State Representatives in these three big city counties. Single-member districts undoubtedly would lead to election of more liberal Democrats, Republicans, Blacks and Mexican-Americans in these counties." That's the end of the quotation. Would you agree with that, at least as regards Dallas County?

A I think I would agree with him, yes, sir.

Q What about with respect to Tarrant and Tarrant, if you know?

A I am not so familiar with it, but I think it is probably a true statement there, too.

Q That's all I have. Thank you.

MR. LUNA: I have a few questions for you, Mr. Johnson.

MR. WILKIN: I want to ask a few questions.

RE-CROSS EXAMINATION

Questions by Mr. Nelkin:

Q When you received the Senate plan, were you given any indication that that was a unanimous decision of the Board or anything of the sort, or was it simply presented to you and you were told to perform it?

A I think that -- no, I don't think -- they said, "We have three votes, and let's go," or something of that nature.

Q Did you hear from the other two members of the Council with regard to their objections, of the Board?

A No, sir, I don't think -- that they came in to me and said, "Draw a different plan," or something like that?

Q Did any of the members of their staff or anything call you and say, "We have got some serious objections," or anything of that sort?

A No, sir, I don't think so.

Q So, actually, until the time that you presented the bill and the people were all sworn, and the two refused to sign it, you didn't really know that there were two objections?

A No. In fact, I was surprised. I think I presented it to Commissioner Armstrong first, and he didn't sign it, and then -- so I didn't know who was voting for what, and when.

Q You were simply told, "We have got three votes, and let's go with it?"

A Yes, sir.

Q Did Commissioner Armstrong tell you why he wouldn't sign it?

A No, sir, I don't think so.

Q I have no further questions.

RECROSS EXAMINATION

Questions by Mr. Jones:

Q You talked earlier in answer to a question about Conservatives running, candidates running as Conservative Democrats, Mr. Johnson. Now, what ticket do they run on? What party ticket is the primary? What party primary are they running in?

A Democratic.

Q So there is no Conservative Democratic Primary; it is the Democratic Primary?

A Yes, sir, that's right.

Q Now, -- and we have stated from time to time people of all political beliefs, all religions and all colors, have we not, on the Democratic ticket, or nominated them?

A Not all.

Q At least of those that you have mentioned today, of

1 those races and colors that you have mentioned
2 today, Greeks, Blacks, Whites, Catholics, Jewish?

3 A Yes, sir.

4 Q On your -- your single-member district, if Dallas is
5 divided up into single-member districts, wouldn't
6 it depend as to how many Blacks, for instance, would
7 elected, would it depend on how the single-member
8 districts would be cut up?

9 A Oh, yes, sir.

10 Q And wouldn't it also depend on how attractive the
11 individual candidate was that was running, what kind
12 of public acceptance he had?

13 A I think that's true. I don't know to what extent
14 you have block voting or -- you take that into
15 consideration, too.

16 Q They mentioned something called "the downtown
17 ticket." Actually, the members of the Legislature
18 elected in Dallas County live all over the County,
19 do they not, including Hutchins, Irving, Carrollton,
20 and other areas?

21 A Yes, sir, Oak Cliff.

22 Q So, the support is countywide, and not just down-
23 town; is that right?

24 A They are elected from all over the county, yes, sir.
25 Their homes are.

1 Q That's all of the questions.

2
3 RE-CROSS EXAMINATION

4 Questions by Mr. Mari

5 Q Let me ask you just one question. Have you ever
6 elected a Mexican-American from Dallas County?

7 A I was trying to think. I don't think so, no, sir.

8 Q I think I had better -- I would like to have the
9 record clear on this, and I don't mean to be offen-
10 sive, but Luna is a Spanish name; however, Mr. Luna
11 doesn't claim to be a Mexican-American, does he?

12 A Mr. Luna, I think, is a maverick.

13 Q We have referred here to the Greeks, the Jews, the
14 Catholics, and the Germans, but, in your opinion, do
15 the Greeks, the Catholics, the Jews or the Germans
16 in Texas face the type of social, economic, educational
17 and other problems that are faced by the Mexican-
18 Americans or the Blacks?

19 A No, sir, I don't think they do.

20 Q Do you know of any ghettos or any barriers for both
21 the Germans, Catholics, Jews or Greeks?

22 A No, sir.

23 Q That's all.

RECROSS EXAMINATION

Questions by Mr. Cuningham:

Q Mr. Johnson, just one other question. If Dallas County was cut up into eighteen single-member districts without gerrymandering, taking into consideration where everybody lived, is it your opinion that more than one Black would be elected?

A Oh, yes, sir.

Q And do you have any idea how many Blacks would be elected?

A No, sir, I don't.

Q But it would be more than one?

A Oh, I think so. I would say three to five, maybe, something like that.

Q And also isn't it true that there would possibly be from West Dallas one Mexican-American, where they are predominantly located?

A Yes, sir; you go on into Akard Street there.

Q Thank you, sir.

Robert E. Johnson

SUBSCRIBED AND SWORN TO BEFORE ME on this

the _____ day of _____, 1972.

**Notary Public in and for Travis
County, Texas**

1952

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NOTARY PUBLIC'S CERTIFICATE

THE STATE OF TEXAS }

COUNTY OF TRAVIS }

I, Harry L. West, a Notary Public duly commissioned and qualified in and for the County of Travis and State of Texas, do hereby certify that, pursuant to notice, there came before me on the 27th day of December, 1971, at the Supreme Court Building of the State of Texas, in the City of Austin, Travis County, Texas, the following named person, to-wit, ROBERT E. JOHNSON, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath, and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness, and that the said deposition was thereafter to be submitted to the said witness to be by him carefully read over and subscribed and sworn to before any Notary Public, and thereafter returned into Court.

I further certify that I am neither attorney or counsel for, or related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or

NOTARY PUBLIC IN AND FOR TRAVIS
COUNTY, TEXAS

1953

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REPORTER'S CERTIFICATE - (Cont'd)

financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal, this 1 day of
 , 1972.

Harry L. Waar,
Notary Public in and for
Travis County, T e x a s

My commission expires June 1, 1973.

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1954

Mr. McDaniel's Copy "Calvant"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL,
Plaintiffs

VS.

NO. A-71-CA-142

BERNARD, ET AL,
Defendants.

DIANE REGISTER, ET AL,
Plaintiffs,

VS.

NO. A-71-CA-143

BOB BULLOCK, ET AL,
Defendants.

JOHNNY MARRIOTT, ET AL,
Plaintiffs,

VS.

NO. A-71-CA-144

PRESTON SMITH, ET AL,
Defendants.

VAN HENRY ARCHER, JR.,
Plaintiff,

VS.

NO. A-71-CA-145

PRESTON SMITH, ET AL,
Defendants.

APPEARANCES:

STUART NELKIN, Esquire, and
DAVID BERG, Esquire,
Appearing for Curtis Graves, et al;

DAVID R. RICHARDS, Esquire,
Appearing for Diane Register, et al;

ROBERT N. GREENBERG, Esquire,
Appearing for Johnny Marriott, et al;

**NICKEY McGUIRE, Esquire, and
NATHAN W. HASON, Esquire,
Appearing for Van Henry Archer, Jr.;**

**WALTER IRVIN, Esquire, and
CLEO STERLE, Esquire,
Appearing for Interveners Washington,
et al, in Tyler Case;**

**B. BRICE CUMMINGHAM, Esquire,
Appearing for Interveners Conrad, et al;**

**ED IDAR, JR., Esquire,
Appearing for Interveners in Tyler Case;**

**SAM McDANIEL, Esquire, and
AL CURRY, Esquire,
Appearing for Defendants;**

**EARL LUNA, Esquire,
Appearing for Defendant Orr.**

**DEPOSITION upon oral examination, of the
witness, ROBERT S. CALVERT, taken on behalf of the
Plaintiffs, in the above entitled causes, wherein the above
mentioned persons are the Plaintiffs, and the above mentioned
persons are the Defendants, pending in the United States
District Court, for the Western District of Texas,
Austin Division, before JACK D. SYKES, a Notary Public in
and for Travis County, Texas, on the 28th day of December,
A.D. 1971, in the Supreme Court Building, Attorney General's
Offices, Austin, Travis County, Texas, between the hours of
9:00 o'clock A.M. and 11:45 o'clock A.M., pursuant to the
following agreement of counsel:**

1956

MR. RICHARDS: I don't know whether Sam wanted to treat it just by notice or whether you wanted it.

MR. McDANIEL: I have no objection to treating it as if it were taken by notice, and my only thinking is, I do want -- I am not going to waive signature on them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And no way -- Do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be available in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master; is that correct, without proving the witness' unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present the witness' testimony strictly by deposition.

1 MR. RICHARDS: I understand. You are not
2 waiving the right to call him as a witness.

3 MR. McDANIEL: That is correct.

4 MR. LIMA: For the State Chairman, we do
5 not waive our right to cross examine the witness at the
6 trial, and in the event he should not be available at
7 trial, we do not waive the use of this -- if he is
8 available, but is not placed on the witness stand, we
9 don't waive our right to cross examine him at the trial.

10 MR. RICHARDS: Well, let me be sure I
11 understand. Suppose that the witness is not called as
12 a witness at the time of trial, what is your position
13 with respect to the use of this deposition at the time
14 of trial?

15 MR. LIMA: I reserve the right to examine
16 him in person.

17 MR. RICHARDS: Well, then, at least you
18 are on notice from me that it is going to be my position
19 that if you have questions to ask the witness, you had
20 better ask them today, because I will intend to offer
21 this deposition as evidence at the time of trial, and
22 you are here pursuant to notice, and at least you have
23 the opportunity to examine him, and it will be my
24 position, if you don't afford yourself that opportunity
25 today, that we will offer the deposition as firsthand

testimony.

MR. LAMAS: I understand.

MR. RICHARDS: All right. Sure.

MR. LAMAS: I may ask him some questions today, but I am simply not waiving any of my rights by participating in his deposition that I don't automatically waive thereby.

MR. RICHARDS: Is there anybody else who has got a position, attorneys who are present who want to put any position of record in the case?

ROBERT S. CALVERT, a witness of lawful age, being first duly sworn on the above causes, testified on his oath as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. HASON:

Q State your name, please, sir.

A My name is Robert S. Calvert.

Q What is your official position?

A Comptroller of Public Accounts, State of Texas.

Q Mr. Calvert, my name is Nathan Hason and I am an attorney from San Antonio and I represent Van Henry Archer and others in a suit to declare unconstitutional the Legislative and the Senate Redistricting bills adopted by the Redistricting Board. Now, you were a member of

the Legislative and Senate Redistricting Board of the State of Texas, is that right?

A Yes, sir.

Q And, along with you there were four other members of this Board, is that correct?

A Yes, sir.

Q They would be Crawford Martin, Ben Barnes, Gus Hatcher and Mr. Armstrong?

A That is right.

Q Now, this Board was created by the Legislature of the State of Texas, is this correct?

A I don't think so.

Q How was it created?

A I understand it was created in the Constitution some 20 years ago.

Q How long have you been Comptroller of the State of Texas?

A For 23 years.

Q And, before that time what did you do, please, sir?

A I was Chief Clerk to the Comptroller for four years and Financial Statistician for the Department for 17.

Q You might say, then, your entire career has been in political office, is this correct?

A Well --

Q Or as an employee?

1 A Well, 40 years of it.

2 Q Yes, sir. Where are you from originally?

3 A Do you want me to go all the way back?

4 Q Yes, sir. Where were you born?

5 A I was born on a cotton farm in McLennan County.

6 Q And, when did you leave McLennan County?

7 A When I was quite small my family moved to Brownwood,
8 and that was where I grew up. When I was grown I moved
9 to Sweetwater, West Texas, and that is where I was
10 living when I was appointed Financial Statistician in
11 the Department by the then Comptroller George Sheppard.

12 Q What year was that, please, sir?

13 A It was 1930.

14 Q And, you have from 1930 until the present time been in
15 your present employ or as an employee of this office?

16 A That is right.

17 Q When was this Board appointed? Now, I am talking about
18 the legislative and -- when was it brought into being?

19 A I don't really know, but I think it was written in the
20 Constitution some 20 years ago.

21 Q Let me rephrase the question. When were you advised
22 that this Board was to be enacted and you a member of
23 it for the purpose of redistricting the House and the
24 Senate?

25 A I think it was after the first trial of the House

Legislative Redistricting was declared unconstitutional.

Q We are talking about the Supreme Court of Texas Mandate?

A Yes, I believe it was.

Q And, this would have been about in September of this year, wouldn't it, if you recall?

A No, it would be before that.

Q How many meetings did the Board -- how many public meetings did the Board have in regards to the redistricting?

A I believe there were three.

Q There were three meetings?

A I believe that is right. The first one was on the 24th of August, wasn't it, of '71?

Q All right. Do you recall the other dates?

A No, I don't.

Q But they would have been subsequent to the 24th of August of 1971?

A Oh, yes.

Q These were public meetings?

A Yes.

Q Were there any private meetings held by members of the Board?

A No, sir.

Q At the time of the public meetings did you hear

testimony from various individuals concerning their

1 ideas in regards to plans for redistricting?

2 A Yes, sir.

3 Q How long would the meetings last, roughly, as near as
4 you can recall?

5 A Oh, three hours -- maybe not that long.

6 Q You did, of course, from time to time discuss this
7 matter with the other members of the Board, didn't you?

8 A Yes.

9 Q Either personally or on the telephone?

10 A Yes.

11 Q Was there anyone in your office that was delegated to
12 do procedural or mechanical or drafting work on this?

13 A No.

14 Q In other words, you were the sole representative from
15 your office that worked on it?

16 A That is right.

17 Q State, if you know, any other people other than the
18 members of the Board who actually worked on the drafting
19 of the two new redistricting laws.

20 A Well, yes. The Attorney General had a staff working
21 on it, several men. The Legislative Council was
22 working on it; they were actually drawing the maps.

23 Q Who is the Legislative Council? Are you speaking of
24 the Board -- what I was referring to as the Board?

25 A I don't know what you mean.

1 Q Are you speaking of Mr. Johnson's office?

2 A Yes. Isn't that the name of it, Legislative Council?

3 Q I don't really know, Mr. Calvert.

4 A I think that is what --

5 Q Are you speaking of Mr. Bob Johnson's office?

6 A That is right.

7 Q And, you say they were drawing maps and working on
8 plans at the same time?

9 A Yes.

10 Q Now, when I say the two redistricting bills I am
11 referring to the House and Senate.

12 A Yes.

13 Q How about Mr. Barnes' office, did he have any men working
14 on this?

15 A I think he did, but I don't know who they were or where
16 they were working. I never contacted them and they
17 never contacted me.

18 Q State who in the Attorney General's office contacted
19 you or you contacted in regards to this, other than
20 Mr. Martin.

21 A Oh, there might have been one or two or three, but
22 mostly it was General Martin.

23 Q And, you don't --

24 A I talked with him many times.

25 Q Sir?

1 A I spoke with General Martin a good many times.

2 Q Do you recall speaking to anyone else in his office
3 about this?

4 A Well, I can't pinpoint it now, but I am sure there were
5 some of them.

6 Q Do you recall speaking to Mr. Barnes about this?

7 A No, except at the meetings.

8 Q Do you recall speaking to anyone in Mr. Barnes' office
9 about this?

10 A No.

11 Q Do you recall speaking to anyone in the Legislative
12 Council or in Mr. Johnson's office about this?

13 A I was over there a number of times but mostly it was
14 with Johnson.

15 Q And, you don't recall anyone else in that office with
16 whom you discussed this?

17 A No.

18 Q Mr. Calvert, did you at any time prepare any plans,
19 maps or suggestions in regard to the redistricting of
20 either the House or the Senate?

21 A No.

22 Q You did sign both bills, is this correct?

23 A Yes.

24 Q Did you have any --

25 A Now, what do you mean "both bills"?

1 Q Excuse me?

2 A The Senate --

3 Q Unless I state otherwise all of my questions will be
4 confined to the Senate and the House.

5 A That is right, I signed both of them.

6 Q Did you have any dissent, complaints, alternate plans
7 or suggestions other than the bills as they were
8 finally approved?

9 A In other words, did I propose any changes?

10 Q Right.

11 A Is that what you mean?

12 Q Right.

13 A No.

14 Q Or did you have any dissent concerning any of the
15 counties or districts as proposed by these two bills,
16 Senate and House?

17 A No.

18 Q Well, would it be fair to say that these were and are
19 approved, of course, by you and your idea of the best
20 possible bills that could have been drawn up by the
21 Legislative and Senate Redistricting Board?

22 A Absolutely.

23 Q And, you feel they are fair and equitable to all races,
24 colors, political parties and all of the voters of the
25 State of Texas?

1 A I sure do.

2 Q State, if you know, who made the suggestion that Harris
3 County be divided into single member districts.

4 A Of the Board you mean -- of the Board?

5 Q Yes, sir.

6 A Oh, I don't know. It was discussed pretty openly.

7 Q Well, can you recall the discussion and why Harris
8 County was given some single member districts?

9 A I know why it was, I think.

10 Q Why?

11 A That is what the people down there wanted. And, we
12 had committees that called on us and brought maps; I
13 turned them over to the Legislative Council. Everything
14 I heard from Harris County they wanted the single
15 district, and vice versa in Dallas, everything I heard
16 from Dallas they wanted the multiple district. We
17 thought that was what the people wanted.

18 Q The people from these particular counties?

19 A Yes, predominantly.

20 Q Yes, sir. Now, you are talking about these people that
21 appeared as witnesses at the public hearings of the
22 Board?

23 A Not only. I had letters and I had telephone calls from
24 both of the places urging me to do this. And, when we
25 got into the meeting it came up, of course, and we were

assured by the Attorney General that it was legal. That is what we were trying to do, trying to arrive at a legal redistricting--

Q That would satisfy --

A I was assured it was legal. And, who was I trying to please? The people. That is who I was thinking about. The people wanted it this way, and I think we did.

Q Mr. Calvert, did you keep a memorandum? Do you still have the letters, the telegrams or any memorandum of the telephone calls that you got from the constituents of these various counties?

A Not on the telephone calls; I had hundreds of telephone calls. But, I have got the letters and the maps if somebody wants to spend about a week sorting them. And, from the two places, predominantly the ones that was talking about Dallas was the multiple district and the stuff that came from Houston wanted the other.

Q Are these records open and available to the members, the complainants and the attorneys, for inspection and copying?

A Sure, I can get them for you. Frankly, they are not in any order because I put them in the file just to get them off my desk. But, I have got them.

Q As near as you recall, Mr. Calvert, was there any dissent by any of the members of the Board in regards

1 to -- let's take the Harris County single member
2 districts as opposed to the Dallas, Bexar, Tarrant and
3 other large metropolitan areas who have multiple member
4 districts.

5 A Was any Members opposed to what?

6 Q To making Harris County into single member districts?

7 Now, I am talking about members of your Board.

8 A Yes.

9 Q And --

10 A Dallas.

11 Q Dallas, Bexar, Tarrant and other large metropolitan
12 areas into multiple member districts.

13 A I don't believe there was in anybody's mind -- I know
14 in my own mind -- there was any question about the
15 legality of it.

16 Q Were all of the members of the Board present at all
17 Board meetings?

18 A No.

19 Q Who was absent, if you recall?

20 A Well, Ben Barnes was absent once that I remember of.

21 Q How about Mr. Natcher, was he at all meetings?

22 A I believe he was except for one meeting when he was
23 real late coming in; I was wondering if he was coming.

24 Q How about Mr. Armstrong?

25 A I think he was there at every one of them.

1 Q State if you know why the House Redistricting Bill was
2 not signed by Mr. Matcher.

3 A Well, I could only presume why he didn't sign it.

4 Q Why is that?

5 A I couldn't make a statement because I can't testify for
6 him, but I think it was because of the situation that
7 he was in and it didn't coincide with what he had
8 proposed back when the House acted. I am sure that is
9 the reason.

10 Q Yes, sir. He had an alternate plan?

11 A Yes, sir.

12 Q That he was in favor of?

13 A That is right.

14 Q Now, I also notice he didn't approve the Senatorial
15 Redistricting; do you know why that was?

16 A No, I don't. That was in the other House. No, I
17 don't know why.

18 Q I notice Mr. Armstrong approved the House Redistricting
19 but not the Senatorial -- I believe that is correct.
20 Do you know why that was?

21 A No, I don't know why. But I do remember that at one
22 vote there was only three of us that voted, and on that
23 one Bob Armstrong didn't vote and I wondered why. I
24 mean, he didn't sign it -- he didn't sign the order and
25 I wondered why but I didn't know why.

1 Q He didn't state why?

2 A No.

3 Q Nor did Speaker Mutchler state why he didn't sign either
4 one?

5 A No. Like I said awhile ago, I can probably presume.

6 Q Yes.

7 A If I was in his position I wouldn't either.

8 Q Mr. Calvert, you are not a lawyer, are you?

9 A No.

10 Q Now, of course, General Martin is a lawyer, and am I
11 correct in assuming that you and other members of the
12 Board looked to the Attorney General for the legality,
13 the constitutionality and the advice concerning whether
14 or not these acts were lawful?

15 A I did; I looked to him for that. And, he assured us
16 at one meeting -- the question had come up about the
17 legality, and that was one thing the Board wanted --
18 to do it legally, and he assured us it was legal.

19 Q Yes, sir.

20 A That is in the testimony, I am sure.

21 Q Yes, sir. Mr. Armstrong is a lawyer, I believe.

22 A Is he? I don't know.

23 Q You don't know? Well, in any event he wasn't giving
24 legal advice regarding the legality or the
25 constitutionality of the acts?

1 A I never heard him say anything about it.

2 Q And, as far as you were personally concerned you were
3 looking to General Martin for this advice?

4 A That is right.

5 Q Did General Martin from time to time furnish you and
6 other members of the Board with constitutional
7 decisions, law cases or anything of this regard, in
8 order to indicate to you what was required by the
9 Constitution of the United States and the State of
10 Texas in order to make any reapportionment plans legal?

11 A Not to me.

12 Q He did not?

13 A No.

14 Q In other words, he simply by word of mouth, if this is
15 correct, advised you that these plans if and when they
16 were prepared were legal?

17 A That was at an open meeting.

18 Q But was this the way he would do it, is simply say,
19 "Now, this is legal"?

20 A Yes.

21 Q Are you aware -- Do you know what it means to say
22 that the districts should be contiguous and compact;
23 was that ever brought up?

24 A I don't know in these words, but I get the general idea

25 Q Yes, sir. But, was it brought up at the meeting by

1 General Martin or others that the districts should be
2 contiguous and compact?

3 A I don't think so.

4 Q Was it ever brought up by him that the Board should
5 waive the racial, ethnic, political and other
6 characteristics among the voters of a particular
7 precinct?

8 A I don't think so. I think really -- I think they
9 avoided that, bringing that up. Wouldn't that have
10 been a form of gerrymandering? I think this Board
11 tried to stay away from that entirely.

12 Q Let me ask you this, did you personally weigh any
13 racial or ethnic situations in arriving at your
14 decision to approve the Senate and the House
15 redistricting plans?

16 A I tried to avoid the thing all the way through. Now,
17 I listened to the speeches that were made before these
18 open meetings, and some of them to me sure sounded
19 like gerrymandering.

20 Q Yes, sir.

21 A But that was the speakers, not the Board.

22 Q Yes, sir. Well, let me ask you this, and I am just
23 trying to get at what happened, Mr. Calvert, would it
24 be a fair statement to say that General Martin would
25 recommend these plans and state that in his opinion

1 they were constitutional and legal, and based upon
2 this and the witnesses from the -- or constituents
3 from the various districts being in favor, as you
4 stated before, would this have been the criteria that
5 caused you to approve the plans?

6 A It would surely contribute to it.

7 Q Well, did you use any other reasoning behind your
8 approval for the plans other than what I have stated?

9 A Other than my own desire to -- that it be right and
10 that it please the people. I thought it should be
11 like the people wanted it.

12 Q Yes, sir. And, when you say the people you mean, of
13 course, the State of Texas and of the particular
14 district or precinct?

15 A Yes, that is right.

16 Q Would it further be fair to say that you completely
17 disregarded such things as ethnic or racial or political
18 reasons in arriving at your decision?

19 A I think I did in arriving at my decision. I did not
20 ignore all the things that we heard, but I tried to
21 not let it influence me. Could I illustrate that a
22 little?

23 Q Yes, sir.

24 A I am not going to call names, but one of the speakers
25 had a district drawn out where he took an old district,

a big part of it, and then when he came close to town he narrowed it down and widened it out again. Hell, it would have resulted in about 87 percent colored. Now, that wasn't the Board, that was one of the speakers.

Q And, what was your reaction to this?

A My reaction to that was that that was a true case of trying to gerrymander the thing.

Q In other words, he was trying to help himself?

A Sure.

Q Or the members of his race, is that correct?

A That was my reaction to it.

Q Now, Mr. Calvert --

A I didn't resent him doing that. He had a right to do that, I guess, before that Board, but that was my reaction to it.

Q Yes, sir. Now, you were born and raised in Texas?

A Yes, sir.

Q And, of course, you have been in political office for many years, and as a result of this would you say that you are fairly familiar with the various jurisdictions in the State of Texas? By this I mean your metropolitan areas, Dallas, Harris County, Bexar County, Tarrant

County, El Paso County and things of this nature?

A Yes. In matters pertaining to taxes, particularly.

1 Not political. Not politics, particularly, but in
2 taxes and that sort of thing.

3 Q Well, you do campaign and run for office?

4 A Oh, yes.

5 Q Are you aware, for instance, in Dallas County that there
6 is a fairly heavily concentrated Negro population?

7 A Not so much as Houston.

8 Q Well, possibly not. Frankly, Mr. Calvert, I don't know
9 the percentages --

10 A Well, I don't either.

11 Q -- myself. But there has been a migration by all
12 people, regardless of race, color or creed, to the
13 metropolitan areas.

14 A Yes.

15 Q Now, were you interested or did you take into
16 consideration the effect of your vote or your approval
17 of these plans as to the result that it would have,
18 we will say, on a Dallas County Negro?

19 A No.

20 Q You didn't even consider this?

21 A No, never gave it no thought.

22 Q Now, would this also be true of any other metropolitan
23 district, without me covering the whole thing?

24 A That is right.

25 Q Did you take into consideration the effect that this

may have on the Latin American population of the State of Texas?

A Not particularly. I think there was one case where I began to wonder about it; that was in Bexar County.

Q Would you ^{elucidate} hallucinate, please, sir?

A Well, we were approached at one time -- I was -- about the gerrymandering which we hadn't -- didn't do because of some Mexican population down there.

Q Well --

A That is about the extent of it.

Q Yes, sir. Were you approached by the Mexicans or were you approached by others?

A I was approached by one Mexican who had friends down there, and he was a friend of mine.

Q Was he a political official?

A No, it wasn't an official.

Q Wasn't elected to political office?

A No.

Q Mr. Calvert, would it be fair to say that in your consideration and approval of the Senate and the House redistricting plans that you did not weight the Latin American elements concerned with the districting of those areas in which they were heavily populated?

A No. I tried to stay away from it.

Q In other words, would it be fair to say that you

1 completely ignored in your decisions the racial, whether
2 it be Negro or Latin American, and ethnic and political
3 interest of various minorities?

4 A Yes, I tried to ignore it because I didn't think it had
5 a place in this. My interest was doing what the mass
6 of the people wanted, and I think we accomplished it.

7 Q Yes, sir. Mr. Calvert, did you in your consideration
8 attempt to make these districts as nearly equal as you
9 could in regards to population?

10 A Yes.

11 Q Well, would it be fair --

12 A But, I didn't do any of that calculating. These crews
13 that Crawford had working and the Legislative Council
14 had working -- I didn't actually try to draw and
15 measure and apply these --

16 Q I understand.

17 A -- these areas. I didn't try to do that.

18 Q And you were guided, then, with simply making them as
19 near equal as you could by the facts applied by the
20 people that had the information?

21 A That is right.

22 Q From a population --

23 A As it was presented on the map that they gave us; these
24 crews that had worked that out.

25 Q When you say "crews" as I recall you are talking about

1 General Martin's crews and Mr. Johnson's crews?

2 A Yes.

3 Q And, your consideration, then, was, as I understand it,
4 that General Martin was representing that they were
5 legal and constitutional and would stand up and that
6 the information supplied to you by the so-called
7 experts, the people working on this, as to the equality
8 in regards to population data as between the various
9 districts?

10 A That is right.

11 Q And you completely disregarded --

12 A I looked at the figures, and as I recall they weren't
13 too far off or they may have varied. What was a five
14 percent -- It was not supposed to be more than five
15 percent off of the average, whatever it was. Some
16 districts were a little above it and some were a little
17 below.

18 Q That, of course, would have to be. You couldn't --

19 A That is right.

20 Q -- make it.

21 A That is right.

22 Q Did you consider whether or not the districts had
23 common interests? By this I mean that if you had a
24 large Senatorial District, and by "large" I mean
25 geographically large, I know you made them as near

1 population equal as possible, but a geographically
2 large Senatorial District -- did you consider in your
3 decision the common interest of the various people in
4 this district?

5 A I don't recall giving that any particular study.

6 Q Yes, sir. Did you consider the voting records of the
7 various smaller entities in these larger districts?
8 In other words, if you had a district, for instance
9 District 21, and I knew that you are possibly not
10 familiar with this until I show it to you, which goes
11 from Northern Bexar County clear down to practically
12 the Rio Grande Valley around Starr County, did you
13 consider the voting records of, say, the people in,
14 say, the northern part of Bexar County as opposed to
15 the ones in Starr, Jim Hogg and Duval?

16 A What do you mean by "the voting records"?

17 Q Whether or not they had common political interest.

18 A No.

19 Q Did you consider the racial, ethnic or any of these
20 other matters which we discussed -- similarities
21 between the people at the northern part of this district
22 and the southern part?

23 A No.

24 Q Did you consider whether or not they had common
25 interests? In other words, whether their elected

1 Senator could fairly represent the extreme areas of the
2 one district because of the common interest of the
3 people in the district, did you consider this?

4 A (Witness shakes head)

5 Q You did not?

6 A I don't believe I did. I don't remember. Anyway, that
7 wasn't the way I went about deciding.

8 Q Well, would you like to tell me in your own words
9 exactly how you did? I think I know, but I mean in
10 fairness to you tell me in your own words just how you
11 did go about it.

12 A The whole thing was based on the divisions that were
13 drawn on the map by this crew that was working and
14 whether it stayed within the population brackets as it
15 should and that it was legal -- the legal procedure.

16 And, is this what the general public wants? Not as --
17 As opposed to the membership. I wasn't looking to the
18 membership of the Senate or the House, but the people,
19 and that is the way I tried to think of the thing all
20 the way through. Now, I didn't do as much detail work
21 on this as some of the others.

22 Q Yes, sir. I understand that. Of course, you were
23 approached, and I am sure the others were too, by the
24 various members of the House and Senate, naturally,
25 wanting to protect their district as nearly as they

1 could to get re-elected.

2 A Yes, to some degree. Yes, some of them more than
3 others.

4 Q Yes, sir. And, well, of course some of them were to
5 be effected more than others, I am sure.

6 A Yes.

7 Q And, also there were certain members of each delegation
8 -- by that I mean the House and the Senate -- who
9 possibly had higher political aspirations for Congress
10 and other offices that may want a particular plan
11 devised and approved, is this true?

12 A I tried not to be influenced by any of that at all.

13 Q Yes, sir.

14 A The fact -- Like I said awhile ago, I did very little
15 of the detail work.

16 Q Would it be fair to say, Mr. Calvert, that you relied
17 on Mr. Martin and Mr. Johnson's office, who had access
18 to these figures, to the law, constitutionality and
19 so forth for their opinions regarding the legality of
20 it, the fairness of it and the population figures and
21 so forth?

22 A I relied on them greatly.

23 Q Yes, sir. Did you yourself do any particular research
24 into the various things that we have discussed here?

25 A No.

Q Is it your opinion that the plans that have been devised -- again I am talking about the Senate and House --

A Uh-huh.

Q -- are as fair, just and equitable as they could be? Now, I realize that perfection is an absolute and that this is absolutely impossible to arrive at, but as fair and just and equitable as this committee could have made it under the circumstances that existed --

A I think they are. I think they are fair.

Q Just a moment, please, sir. Mr. Calvert, I am going to hand you a map of the Texas Senate Districts as enacted by your Board on October 15, 1971, and ask you to please take a look at it; that is from Mr. Johnson's office.

A Well, as I recall, this is what was furnished us, the drawing. There may be some changes made in some of these lines, I am not sure.

Q Well --

A I think --

Q If I tell you that map came from Mr. Johnson's office and was the plan that was adopted by your Board, if you will notice in the legend down there it says "Adopted on October 15, 1971 by the Texas Redistricting Board" do you have any quarrel with that?

1 A No.

2 Q Does it appear to be what you did approve?

3 A Yes.

4 Q I will call your attention to the bottom part of the
5 map, to Senatorial District 21.

6 A Yes.

7 Q Now, this is the one. As I told you before, I represent
8 a group from Bexar County. Now, you will notice that
9 this district incorporates down to almost the lower
10 Rio Grande Valley, which is Starr --

11 A Yes.

12 Q -- Jim Hogg, Duval, Zapata. And you will further
13 notice that at the northern extremity it goes in and
14 takes the top half or the top portion of Bexar County.

15 A Yes.

16 Q Is that correct? It also completely encircles
17 Districts 19 and 26.

18 A Now, what?

19 Q These are Senatorial Districts within Bexar County.

20 A Oh.

21 Q That is Mr. Kothman and Mr. Bernal's districts?

22 A Uh-huh.

23 Q Are you familiar with the north portion of Bexar County?

24 A Not particularly, no.

25 Q You don't know anything about the ethnic, racial or

political views?

A Not really.

Q All right, sir. Now, you used the term "gerrymandering" awhile ago. Looking at this map would you say that District 21 does any gerrymandering?

A I don't know whether it does or not. Not to my knowledge.

Q But it does completely encircle Districts 19 and 26?

A Uh-huh.

Q And does extend all the way from the Rio Grande Valley at the bottom to the northern part of Bexar County at the top.

A Guadalupe to Starr.

Q Well, it goes above Guadalupe, doesn't it?

A That is as far as it goes.

Q Could I see it a minute?

A If I can read that little print up there.

Q Well, you are correct. Guadalupe actually does extend north of Bexar there.

A A little bit.

Q Is it your opinion now, and was it then, that the people in this Senatorial District would have a common interest?

A You mean race-wise or what -- or anywise?

Q Let me give you an example. If they elected a State

1 Senator -- which of course they will do if this stands
2 up -- from District 21, do you think that they could
3 elect a Senator from within this District, whether it
4 be from Northern Bexar County to the extreme southern
5 part of Starr County, do you think that this Senator
6 would represent a constituency that had a common
7 interest in the Texas Senate -- in the laws and bills
8 and so forth to be passed, considering the geographical
9 area, the metropolitan as opposed -- the urban as
10 opposed to the rural and so forth; would you have an
11 opinion on that?

12 A It seems to me -- I don't have a fixed opinion on it.
13 It seems to me that that area of the state -- their
14 interests are common.

15 Q Including the northeast part of San Antonio proper?

16 A Well, up to that, I guess.

17 Q Well, what about -- Do you know where Alamo Heights,
18 Terrell Hills and Olmos Park are?

19 A About.

20 Q Do you think they would have a common interest with the
21 people from Starr County?

22 A I don't know whether they would or not.

23 Q Were you approached by either Senator Bernal or
24 Senator Kothman in regards to this?

25 A No.

1 Q Either District 21 or 26 and 19, which are their
2 districts?

3 A No. I know both of them.

4 Q You know both of them?

5 A I know both of them.

6 Q Were you approached personally by anyone else, if you
7 recall? I know you got a lot of letters and phone calls.

8 A (Witness nods head)

9 Q Sir?

10 A I got a lot of letters. If you all want them I will
11 give them to you.

12 Q We appreciate that.

13 A I don't think you want them, but I will give them to
14 you.

15 Q All right. I will try to get through in just a moment.
16 Do you have any independent recollection at this time
17 of being approached by anyone concerning any of these
18 three districts, 19, 26 or 21?

19 A Only 26 and 21.

20 Q And --

21 A I was approached by one gentleman who was a friend of
22 mine.

23 Q Yes, sir. I believe you said that awhile ago. Would
24 you tell me who that was, please?

25 A He worked for the Attorney General at one time. What

the hell was his name? He was a Latin.

Q And, what was his interest?

A His interest was that we not allow any gerrymandering in order to defeat Joe Bernal, for instance.

Q In other words, his interest was in protecting Senator Bernal, is that correct?

A That is right. I don't see anything wrong with that.

I didn't see anything wrong with it. I wasn't

influenced by him. I could see his interest. But you asked me if anybody ever approached me, and he did.

Q Yes, sir. I am going to hand you a letter, which is identified as "PSA-1", which is apparently from Joe Bernal directed to the Legislative Redistricting Board, and ask you if you received this -- if you recall.

A Is this all one letter?

Q Well, with attachments and exhibits, Mr. Calvert.

A I don't remember. But, if I got it it is down there with the rest of them. I am pretty sure I got it.

Q Yes, sir. Could I see that, please, sir? Was this letter, or any of the attached exhibits, considered by you in anywise in your decision?

A I don't recall that it was. I had so many I couldn't classify all those letters.

Q I understand that, Mr. Calvert. I am sure you did have an abundance of mail, phone calls and various

communications with people that were interested in the redistricting, and I certainly won't expect you to recall each incidental item.

A Wait just a moment, I want this off the record.

MR. EASON: It doesn't make any difference to me.

MR. CUNNINGHAM: We want it on the record if he is talking about letters and everything.

MR. McDANIEL: Well, just don't say it if you don't want it on the record.

A I don't want it on the record. It has no bearing on the decision here, anyway.

MR. CUNNINGHAM: Let him go off the record, then. Take it off the record.

(Whereupon, a discussion was

had off the record.)

MR. EASON: I believe that is all.

CROSS EXAMINATION

QUESTIONS BY MR. BERG:

Q Mr. Calvert, I am David Berg and I represent the unnamed proponent of the 87 percent Plan, I represent Curtis Graves of Houston, Harris County. Mr. Calvert, I am just going to ask you a very few questions concerning, from what I gathered, is the basis of your decision in this matter. If I am not mistaken,

you have relied a great deal on what the people had to say.

A I tried to. I think I did.

Q Now, can you tell me who those people were from Harris County specifically as you remember them?

A I couldn't list them.

Q Well, could you --

A What I could do, I could dig out of our files the ones who came here in a group with maps drawn for our consideration. I looked at them and listened to them and turned them over to Bob Johnson.

Q Would it be fair to say -- Excuse me.

A A few of them I knew, most of them I didn't know personally. Old Senator Braswell was one of them that used to be in the Senate. I could prepare a list of who they were.

Q Let's talk, for a moment, about Senator Braswell, who is now a practicing attorney in Houston.

A Yes.

Q Can you tell me who he was up here on behalf of?

A Harris County, being that was their -- Well, that was what they were interested in, Harris County being separate districts.

Q Well --

A That is what they were interested in. And, another

1 thing they were interested in was adding a part of
2 those lower counties right below Harris.

3 MR. CUNNINGHAM: Fort Bend?

4 A Fort Bend. Adding a part of Fort Bend into their
5 setup; that was the main thing they were interested in.

6 Q That was Senator Braswell's concern?

7 A Well, that committee that he was with.

8 Q What committee was that?

9 A It was about half a dozen of them. They came on their
10 own.

11 Q Just a group of individuals?

12 A Yes.

13 Q Would you say they were from the poor sections of
14 Houston?

15 A No.

16 Q Were they big businessmen?

17 A I would say they were big business.

18 Q Did you have many representatives from the poorer
19 sections?

20 A No.

21 Q You did talk to Representative Graves, I believe, at
22 the Legislative Redistricting hearings?

23 A No.

24 Q Did he appear before you, sir?

25 A Yes.

1 Q Okay.

2 A Before the Board.

3 Q Before the Board?

4 A At the first meeting, I believe.

5 Q That would be around August of '71?

6 A August 24th, I think.

7 Q You were in attendance?

8 A Yes.

9 Q Okay. In arriving at your decision, Mr. Calvert,
10 would it be safe to say you relied to a great extent
11 on what the businesses of Houston and Harris County
12 had to say?

13 A Not as much as I did other things; that that was what
14 the people down there wanted. And, I was assured it
15 was legal and that was the way they wanted it.

16 Q What other things, Mr. Calvert?

17 A What did I say, other things?

18 Q You said that -- I asked you if you relied to an
19 extent on big business in making your decision, and
20 you said, "Not as much as other things" and I would
21 like to know what the other things were.

22 A The things that came before the Board and that the
23 Board talked about; that the multiple district down
24 there was what the people down there wanted.

25 Q I am referring primarily at this point to the Senate,

1 Mr. Calvert. What things were brought before the Board
2 that you relied on concerning the makeup of the Senatorial
3 Districts in Harris County?

4 A I don't really remember. I know that they -- How many
5 do they have down there; how many Senatorial Districts --
6 five?

7 Q Let me provide you with a map of the new Senatorial
8 Districts in Harris County. Here you are, sir.

9 A You mean this is a Senatorial District and this is a
10 Senatorial District?

11 Q Yes, sir, and so on. This is a big Senatorial --

12 A Four, five, six -- I remember seeing it, but --

13 Q Now, what I want to get to is: what exactly caused you
14 to decide, number one, for instance that this was a
15 legal Senatorial drawing -- these lines were legally
16 drawn up?

17 A Why did I think it was legal?

18 Q Yes, that is the first question.

19 A We were assured by our Attorney General, our lawyer,
20 that it was legal.

21 Q You relied on the AG for that information?

22 A Yes. I relied on him for that -- for an answer in all
23 of our court questions. He is my lawyer.

24 Q Did you take into consideration what the people had to
25 say, what they wanted? Did you decide that the areas

that were drawn for Senatorial Districts should represent a community of interest?

A Well, this was in our minds, of course.

Q Okay, sir. Did you have some sort of memorandum advising you of the legality -- from the Attorney General of the legality of these districts?

A You mean some written memorandum?

Q Yes.

A No. It was his statement at the meeting.

Q This was his personal comments at the meeting that you relied on that they were legal?

A Yes. He said, if I can remember it, "I assure you that this is a legal procedure". This is what we wanted to know, I think all of us. I think all four of us, that is what we wanted, that it was legal and it was fair and it was what the people wanted. I feel

like that all four members were sincere about what they were doing.

Q Which four were those, sir?

A I am leaving Gus Natcher out because of his particular situation.

Q All right, sir. So, basically it was a four-man committee --

A I would say so.

Q -- after his problems. Have you at any time, sir,

1 testified or made comments into the record at the
2 hearing -- At the Legislative Redistricting Council
3 or Committee did you ever make any comments about who
4 you relied on, what factors you relied on, that you
5 recall?

6 A At the Board meetings?

7 Q Yes, sir.

8 A No. I listened and voted.

9 Q You have indicated that you didn't rely on big business
10 as heavily as you relied on other matters.

11 A I didn't intend to leave that impression, because that
12 wouldn't be right. It wouldn't be right for me to say,
13 "Let's let big business do this and let's let the
14 little fellow do that." That wasn't in there.

15 Q Is it your feeling, Mr. Calvert, that big business,
16 then, wouldn't know any more about the situation than
17 other members of the committee?

18 A I think big business probably would know more about it.

19 Q But that didn't cause you to rely more heavily on them?

20 A No.

21 Q Mr. Calvert, excuse me for the delay, you have
22 indicated your offense or your revulsion with any form
23 of gerrymandering during the course of this hearing.

24 A Yes. I don't think it was right to gerrymander
25 something -- if I know the meaning of the word, the

application of it.

Q I am certain you do, Mr. Calvert. Mr. Calvert, I ask you again to look at this map of Harris County, and for a moment consider the geographical makeup of these districts, 13, 15, 6, 11, 17 and 7. Did you consider the geographic makeup of these districts in arriving at your decision -- in an attempt --

A I don't believe I did.

Q In an attempt --

A I don't recall.

Q You don't recall?

A I don't recall that. I tried to -- What do these Houston look like? I don't think I did.

Q So you didn't really rely upon the geographic makeup of the county?

A Not deliberately -- not intentionally I didn't.

Q Well, of course, -- No one is saying intentionally and deliberately, but is it your opinion, then? You signed this act and you agreed to it. Is it your opinion that these weren't gerrymandered --

A That is my opinion.

Q --geographically?

A Yes, sir.

Q By "geographic gerrymandering" we also imply barriers like highways and that sort of thing too. Would you

1 consider the highways within a city or the makeup of
2 the roads or system or bayou systems of a city?

3 A I don't recall that it ever entered my mind.

4 Q Did you check out the prior voting record of the
5 particular segments of the city?

6 A No.

7 Q That was unimportant in Harris County to you -- as in
8 other counties?

9 A What voting records are you talking about?

10 Q The voting records of the people of the city, how they
11 voted, who they sent to the Senate.

12 A No, I wasn't interested in that. I was afraid you
13 meant some voting record in the Senate.

14 Q Oh, no. What I am concerned with here is, at this
15 point, is the voting record of the people within the
16 counties.

17 A No, that had no bearing on me.

18 Q Whether they voted liberally or conservatively was of
19 no interest to you?

20 A Well, I wouldn't know. I didn't make a study of that.
21 It might make a difference to me but I wouldn't know
22 that.

23 Q Mr. Calvert, in listening to the people of Houston
24 were you able to discover their needs and desires in
25 these matters concerning the Senate?

1 A Oh, not that I can remember, as to their needs. I
2 think they were trying to get over to us that in their
3 judgement this would be a proper approach to it.

4 Q Proper what?

5 A Proper approach to the redistricting, a proper
6 redistricting. They had their own reasons, I presume.
7 And, like I said awhile ago, this committee that came
8 was mostly big business.

9 Q Mostly big business?

10 A Yes.

11 Q Mr. Calvert, do you feel the needs of the big businessmen
12 of Harris County are the same or similar --

13 A I think they know more about it. I think they know
14 more about the needs than the individual.

15 Q Big business knows more about the needs of Harris
16 County than the individuals of Harris County?

17 A I feel that way. I never discussed that with them.

18 Q Yes, that is clear. But, what I am trying to drive at,
19 Mr. Calvert, is whether you believe the needs of the
20 individuals of Harris County are represented by the
21 needs of big business.

22 A I wouldn't know. I don't think I would know.

23 Q You didn't consider that fact in drawing these lines?

24 A No. I didn't try to do that.

25 Q I didn't catch something awhile ago that I wanted to go

1 over with you. Did you say that Ben Barnes was absent,
2 in your recollection, only once from the meetings?

3 A I think it was only once. I am not sure; it may have
4 been twice.

5 Q Did the big businessmen you talked with express any
6 concern over the corporate income tax?

7 A (Witness shakes head)

8 Q Never said a word about that?

9 A No.

10 Q Do you remember talking to Everitt Collier?

11 A About income tax?

12 Q About the Senatorial Redistricting.

13 A Who is he?

14 Q The publisher of the Houston Chronicle.

15 A I probably talked to him on the phone.

16 Q You just don't know him offhand?

17 A No.

18 Q Did you talk to Senator Jordan during the period of
19 time you were concerned with redrawing lines?

20 A No.

21 Q What did the businessmen want to do with the district
22 in Harris County?

23 A They wanted them cut into individual areas or districts.

24 Q What about the Senate; what did they want to do with

25 that?

1 A I don't recall that they approached that. I don't
2 think that was the purpose of their meeting down here.
3 I think mostly it was the house.

4 Q Is there anything that I have left out or that you may
5 have had your memory jarred about that may have served
6 as a basis for your decision concerning Harris County
7 that you haven't already discussed with Mr. Nathan
8 Eason, the prior attorney, or myself?

9 A No. I think that the overall statement, including me
10 and the other four, I think were trying their best to
11 do a good job.

12 Q I am certain of that. But was there any other basis,
13 Mr. Calvert, that you have not yet discussed that went
14 into your decision --

15 A I see what you mean. No.

16 Q -- to approve the Senatorial Districts of Harris County?

17 A I don't think so.

18 MR. BERG: I am going to pass the witness.

19 CROSS EXAMINATION

20 QUESTIONS BY MR. IDAR:

21 Q I am Ed Idar from San Antonio and I represent a group
22 of Mexican American intervenors in the case that was
23 filed in Tyler, and we are particularly concerned with
24 the House. We believe that your Board conceivably
25 could have done a little better job, as far as we are

concerned, on House Redistricting. That is our position.

Now, I am going to try to not be repetitious of what we have already gone into; there is no point in that.

There are just two or three matters that I would like to button up. For example, one thing that I am concerned about, were you under the impression or are you still of the impression that in Dallas County your Board was giving them multi-member Senatorial Districts? In other words, do you know for Dallas County whether you put all the Senators into one district or into single districts?

A I don't remember. I really don't.

Q I was just wondering --

A I relied on the Senate District. I relied a lot on the action of probably Ben Barnes, figuring that he knew more about it. But I don't remember any discussion on that when it came to the Senators -- to the considering of the breaking up of the Senate District in Dallas County.

Q The reason for that question, I have here a copy of a news clip from the Dallas Morning News -- apparently this is a column. This must be a regular column in the newspaper that goes under the title of "Weather Vane". Now, apparently this was published on Sunday, November 21, 1971. I don't have the entire column and

1 I don't know who wrote it.

2 A Did it quote me in there?

3 Q Yes. Let me read it to you briefly and see if they
4 quoted you correctly on this point. The first paragraph
5 of this column reads as follows: "Comptroller Robert S.
6 Calvert, the swing vote in favor of multi-member House
7 Districts for Dallas and other counties in the five
8 member Board's Legislative Redistricting actions,
9 apparently thought Dallas also had multi-member
10 Senatorial Districts. When asked if he favored a
11 multi-member district for Senators who have individual
12 districts, Calvert said he favors multi-member districts
13 and said Dallas Senators were lumped into one district.
14 Informed that Dallas Senators don't have multi-member
15 districts, Calvert said, 'Well, I thought they did'."

16 A That is right. The only thing I resent about that is
17 that he called me a "swing vote".

18 Q Okay. But the rest of the quotation, is that true and
19 correct?

20 A That is just about what happened in that telephone
21 conversation.

22 Q All right. Now, at the time that you all approved --
23 or at the time you personally approved the Senate
24 Redistricting Plan you were under the impression then
25 that Dallas had multi-member Senatorial Districts?

A I think that is right. Of course, one of these telephone calls taxes you pretty much, but that is exactly what I said.

Q I realize that we can all make mistakes, and you were hearing from a lot of people and listening to a lot of people, but what I am curious about: was there any possibility that in acting on the House plan you might have also acted under the erroneous impression as to what you were doing to a particular town?

A I don't think so.

Q Is it possible that, for example, Bexar or Dallas County you might have thought you were giving them single member districts although they in effect were getting the multi-member districts?

A There was very little discussion about all of that as far as the Senate was concerned.

Q Well, my question was as to the House.

A I don't -- I don't think it entered into any of my decisions.

Q You have been around Texas a long time, haven't you, Mr. Calvert?

A Yes, maybe too long.

Q How old are you, sir, by the way?

A Now, wait a minute. Do I have to give my age in this kind of thing?

1 MR. McDANIEL: Go ahead and answer it.

2 A I am 79.

3 MR. IDAR CONTINUES:

4 Q I just wanted to establish that you are an old Texan,
5 for the record and for the benefit of the judges who
6 might be looking at this record. Will you concede
7 with me that both the Mexican American and Black in
8 this State have suffered, and still suffer, from rather
9 serious social, economic, educational and other problems?

10 A That they have suffered?

11 Q And still suffer.

12 A Probably so.

13 Q For example --

14 A I am not smart enough to know.

15 Q I realize it is not your particular field of expertise
16 and I realize you are not a sociologist.

17 A That is right.

18 Q But you are a citizen and I presume you read the daily
19 newspaper and keep yourself fairly well informed of
20 what goes on in the State. For example, are you
21 familiar that we presently have under litigation in the
22 Federal Courts school districts involving Corpus Christi,
23 Dallas, Waco, Austin and others?

24 A Yes.

25 Q And, that in all of these lawsuits we have Mexican

Americans and Blacks involved?

A Yes.

Q And, that they are making rather serious allegations as to their treatment about our educational system?

Are you further aware of the fact that just within the past week or so we have had a decision by a Federal District Court that is going to have a tremendous impact on the financial structure of our public educational system?

A I was reading it in the newspaper.

Q And the fact that that suit was brought by the Edgewood Independent -- rather by people or residents of the Edgewood Independent School District in San Antonio, which is almost totally Mexican American, and you will concede with me that those people have been suffering, or apparently -- if we are going to go by what the Court held -- have suffered under the present financial structure of our State policy, I should say, as it relates to public education? Will you concede with me that we also have serious health problems affecting both of these schools?

A Health?

Q Health. And that we may have some fairly serious problems having to do with law enforcement and the administration of justice?

1 A I will concede with you that they have got problems in
2 all these fields.

3 Q All right, sir.

4 A But as far as being, you said, expertise on it, I am
5 not.

6 Q I realize that. But will you further concede with me
7 that the Texas Legislature, both the House and Senate
8 and both of them acting together in the enactment of
9 legislation, could be a very strong factor in what is
10 done about some of these problems? In other words, we
11 have a lot of people in Texas, I don't know, seven or
12 eight million or nine million, I don't know what the
13 present total population is, and we have a lot of
14 different interests in these tremendous populations,
15 is that correct?

16 A Sure. I can't see where that has anything to do with --

17 Q Well, I am going to get to the point in a minute.
18 Now, within this tremendous population group we have
19 a lot of interests, we have your Mexican American,
20 right?

21 A (Witness nods head)

22 Q We have your Black, we have your business people and
23 you have a lot of other political and other elements
24 of all types, this is all true under our system of
25 democratic government, and the only recourse as far as

1 legislation is concerned that all of these different
2 groups may have to seek relief to these problems is
3 through the Texas Legislature, through their Senators
4 and Representatives in those bodies, is that correct?

5 A I guess, I think so.

6 Q Therefore, my point is: do you feel that as far as the
7 Mexican American and Black that they should be entitled
8 to fair representation in the Texas Legislature,

9 particularly the House, which is the larger body, so
10 that some of their interests can be brought -- can be
11 focused on and acted on?

12 A Sure. I think they ought to be represented. And, I
13 think they are under this redistricting.

14 Q All right. Now, let me ask you, sir. Now, do you
15 sincerely believe that under a multi-district -- under
16 a multi-district -- under a multi-district plan for
17 electing the Texas Legislature -- rather the
18 Representatives, say, from Dallas and Bexar County that
19 the Mexican American and Blacks have as fair opportunity
20 to elect representation as they would under a single
21 member plan?

22 A Sure. I can't see any difference in why they wouldn't.
23 They live everywhere.

24 Q Well, are you familiar with San Antonio?

25 A A little bit.

1 Q You haven't visited in the city in all these years?

2 A I soldiered over there.

3 Q Have you been on the West Side?

4 A That was a long time ago.

5 Q Have you heard of the West Side in San Antonio?

6 A I believe around 410 West.

7 Q Well --

8 A Over in that district, I am not too familiar.

9 Q Well, will you concede with me in the major cities,
10 like Dallas, Houston and San Antonio, these particular
11 minority groups by and large are concentrated in certain
12 geographical areas within a given city; you know that
13 much?

14 A Well, that is natural.

15 Q Right. Will you further concede with me that in Dallas
16 and Bexar County, for example, those geographical areas
17 where these groups are concentrated would be large
18 enough population-wise to where they would have an
19 opportunity to elect several representatives under a
20 single member district plan?

21 A They ought to be able to elect one in their district
22 where they live.

23 Q Certainly. Let me ask you this --

24 A They would have representation.

25 Q Dallas County has approximately 1,300,000 population.

1 Will you concede that is about right?

2 A I imagine so -- something like that.

3 Q And, I understand the Legislative Redistricting Plan
4 for the House, that your Board adopted, the average
5 size single member district is, I think, somewhere
6 around 74,000 or 75,000.

7 A Yes, that is right.

8 Q All right. Now, how would you compare the cost of
9 campaigning in a district that only has 75,000 people,
10 and presumably a lot less voters, with campaigning

11 countywide or citywide in a district that takes in
12 1,300,000 people?

13 A I think it wouldn't cost as much for me to solicit
14 70,000 as it would a million.

15 Q Did you consider those factors at all?

16 A No.

17 Q You did not consider that?

18 A It didn't enter into my thinking when we voted on these
19 districts.

20 Q All right, sir. So, you did not consider -- Let me
21 ask the question and I will move on to something else.
22 So, you did not consider the cost of campaigning in
23 the district with, say, 75,000 people in contrast
24 with campaigning in a district consisting of 1,300,000
25 people?

1 A In this district did I consider that?

2 Q Yes.

3 A No.

4 Q That was not a factor in your thinking at all?

5 A No.

6 Q All right. Let me go on to something else.

7 A I didn't go that far on it.

8 Q You don't think that would have been a fair factor to
9 consider in determining whether to give the major
10 cities single city membership districts as you did
11 Harris County?

12 A If the people in the area had wanted it that way we
13 probably would have done it.

14 Q All right. Now, you have made some reference to the
15 fact that you had apparently quite a bit of
16 correspondence from Harris County.

17 A Yes.

18 Q Did you have as much correspondence from Bexar and
19 Dallas Counties?

20 A No. We had more from Dallas, but not from Bexar.

21 Q Not from Bexar?

22 A Not that I recall. I didn't tabulate it; I am just
23 recalling the mail that came in and the calls. Much
24 more came in from Dallas than from Bexar.

25 Q Assuming that you had had, say, 500 letters from Bexar

1 a minority group such as the Mexican American or the
2 Black?

3 A That didn't enter into my thinking.

4 Q You were not concerned with that principle?

5 A I don't mean I wasn't concerned.

6 Q All right.

7 A I am concerned about all of these problems, but it
8 wasn't a factor in this Redistricting Board.

9 Q All right. Do you recall whether --

10 A My thinking, I mean.

11 Q Do you recall whether the Board -- I will say Body --
12 or any of the members of the Board, if you know,
13 firsthand, gave the staff any instructions as to the
14 implementation of this particular constitutional
15 principle that I have just stated to you?

16 A (Witness shakes head)

17 Q Did you ever give the staff any guidelines as to
18 whether they should come up with a plan that should be
19 a single member district for the major cities -- all
20 the major cities, not just Harris County or Houston
21 or multi-member districts? Let me rephrase it.

22 A Start over again. I don't know what your question
23 really was.

24 Q Do you recall whether the Board, I will say Body, ever
25 gave the staff any instructions -- Now, the staff has

to know what the boss wants when they start out on the job.

A Yes. You are talking about these people that actually drew the maps.

Q Right.

A No. I didn't have anything to do with that, except to see it.

Q Apparently the Texas Legislative Council under Mr. Johnson, that particular staff, and apparently one or two other people and some other people from the Attorney General's office, according to your testimony, were the ones that actually physically drew the maps --

A That is right.

Q -- and added up the figures and were satisfied that the population deviations were going to be within what they call -- within what the law required. Now, a staff -- I mean, the staff was subject to the orders of the Board, is that correct? Weren't they acting under your --

A The Board -- In a sense they were because they were working under the chairman.

Q And the other members of the Board.

A They were working under Crawford Martin and he was chairman of this Board.

Q Well, let me ask you, did the Board at any time delegate

1 its responsibility to Mr. Martin, as far as guiding the
2 staff as to what they were going to do?

3 A When they elected him chairman didn't they do it?

4 Q Well, do you know whether Mr. Martin, under the
5 directions of the Board, ever gave the staff some
6 guidance, for example, as to Dallas and as to Bexar
7 County, whether they should go for multi-member
8 districts or single member districts?

9 A I don't know.

10 Q Do you ever recall this -- any such guidelines being
11 made in your presence?

12 A No.

13 Q Did you ever make any inquiry to determine what kind
14 of guidance the staff was receiving?

15 A Oh, it might have been discussed. I talked with
16 Crawford Martin every once in awhile about what was
17 going on, but I don't recall any specific thing like
18 that.

19 Q You know, it would have taken a lot of additional
20 figuring for Dallas and Bexar Counties, for example,
21 not to talk about the other multi-member districts
22 throughout the State, it would have taken a lot of
23 additional figuring for the staff if they had had to
24 divide those counties into single member districts.

25 A Yes.

Q Did the Board ever make a policy decision on behalf of the State of Texas to instruct the staff that on these major counties, aside from Harris, they were to go for multi-member districts?

A Not that I know of. I never issued any directives to any of them. I have nothing to do with that, except to say that they failed to do it. I don't know why.

Q And, you don't know of any other Board member that did?

A No, except Crawford. I don't know if he did or not.

Q Now, I think I am about through, if you will bear with me another minute or so. Now, do you recall that --

I believe it was the second -- I suppose it would have been the second public meeting relating to House

redistricting that the Board held? I may be incorrect

whether it was the second or third, but during the

meeting of October 6, 1971, I have the proceedings

have of a hearing that the Board held on House

redistricting; they reflect the fact that you were present at that meeting.

A I was present at all of them.

Q They further reflect the fact that among the people who testified were Senator Oscar Henry

and the other members of the Board

Q A Mr. William Robertson, Jr.

A I don't remember him, but I know Oscar

Q Professor Albert W. Alschuler.

1 A Yes.

2 Q Do you remember his being there?

3 A (Witness nods head)

4 Q And Mr. Phil Strickland as well as Joe Looneses, Kenneth
5 Keeth and there was a Mexican American there by the
6 name of John Almis from San Antonio that came in late.

7 A I know what meeting that was.

8 Q All right.

9 A It was over in the Senate Chambers.

10 Q Okay. Now, the reason I wanted to be sure you recall
11 that meeting is because I wanted to ask you: do you
12 recall Mr. Robertson's testimony?

13 A Not specifically.

14 Q All right. The minutes here reflect that Mr. Victor
15 Robertson, Jr. of Dallas was with the firm of Lewis,
16 Holes and Grace, which is presumably a very well known
17 public relations and polling firm which does polling
18 or has conducted polling for various political
19 candidates and has done market research for other
20 people; do you recall that?

21 A Not that specifically.

22 Q I see. But, do you recall the fact that Mr. Robertson
23 testified to a number of polls that were taken among
24 the people in Dallas County; for example, he testified
25 that he had conducted a poll in January of 1966 for

Senator Murry? You don't recall that?

A No. There were about seven of them, wasn't there?

Q Sir?

A Yeah, there about seven that spoke that day?

Q Yes, there was a number of people that spoke that day.

Q I am just wondering whether or not you recall this

particular testimony from Mr. Robertson.

A I listened to all of it, but I don't recall any of the arguments that they put up.

Q Well

A Maybe I wasn't listening that close.

Q Well, maybe so, I don't know. But, do you recall

Mr. Robertson testifying that the last poll that he had taken among the people in Dallas, which apparently was toward the latter part of 1963, that 61 percent of the people in Dallas preferred single member district for that county?

A I don't recall it.

Q Apparently this testimony made very little impression

on your mind.

A You are right.

Q And you gave it very little consideration.

A You are right.

Q Is there any particular reason why you did not give it more consideration than you appear to have? Were you

not impressed about a poll that allegedly represented the view of 61 percent of the people of Dallas in contrast to those who must have telephoned or sent letters in?

A Frankly, I wasn't impressed by many of the speakers that appeared before that Board.

Q Okay.

A How are you going to be impressed by seven people going over and over and over so damn many -- excuse me, don't put that in there -- that you would have to be a Socrates or something like that to even know what all it said.

Q If you don't mind, I would like to go back on the record.

A You want to get back on the Board?

MR. McDANIEL: You were on the record all along.

MR. IDAR CONTINUES:

Q Do you recall another meeting that was held on September 30th, again on House reapportionment, and at this meeting you had Dick Reed and Mr. Blythe, Joe Allen, Bob Gammage, Fred Agnich, John Hill, Earl Lama, Jack Blanton, John Boyle, Dave Pickett -- and skipping over some of the names -- Mr. Earl Lama and Mr. Tom Crouch and a number of other people?

1 A I remember that meeting.

2 Q And apparently at this particular meeting some were in
3 favor of multi-member districts and others were opposed.

4 A That is right.

5 Q All right. Do you recall what impression Mr. Lamm's
6 testimony made upon you at that meeting?

7 A Must not have been very much, I don't know. I don't
8 remember.

9 Q Well, was this another meeting where you just didn't
10 pay any attention or didn't consider or weigh heavily
11 whatever the people said?

12 A I didn't weigh it too heavily, frankly.

13 Q Well, I have given you the names, and the record
14 reflects that you probably had somewhere around 20
15 people or so testifying at those two public hearings.

16 A That is right.

17 Q Now, you have earlier testified that one of the major
18 factors in making up your mind as to those plans was
19 what the people from those areas wanted. Now, you
20 have indicated that you didn't care too much or didn't
21 weigh too heavily whatever those people said at this
22 particular meeting, so are we then to assume that you
23 relied mainly on telephone calls or correspondence to
24 determine what the people wanted from those areas?

25 A Largely. Now, don't get me wrong. I listened as closely

as I could to all those speeches.

Q But you didn't weigh them too heavily --

A (Witness shakes head)

Q -- as reflecting what the people wanted?

A There was two sides on every one of them.

Q I saw.

A Every one of those meetings. I don't mean to be --

Q Would it be fair to say, Mr. Calvert, that actually you let other members of the Board take the lead in the matter, and the Attorney General and Mr. Barnes came up with a plan and you were willing to go along with them and rely on their judgment?

A You might say to some extent, yes. Not entirely. I did my own thinking, but we seemed to agree on all of it and I didn't have any --

Q Did you have any strong conviction as to single member districts for the major counties apart from Harris County?

A No, I didn't have any strong feeling except to decide "is this what the people want".

Q And, by "the people" you are talking mainly about those that called you by phone or wrote you letters?

A Yes, and what I listened to all this crap.

Q How would you ever determine -- Now, let me ask you this: did you have many letters from Mexican Americans

or Blacks?

A I don't believe I did.

Q Did you have as much as, say, one percent of the letters that you received from either one of these groups?

A I couldn't give you a percentage, no.

Q Were you concerned at all to determine what the feelings of the two population groups might be?

A Yes, I was concerned about the whole overall thing.

Q But how did you specifically go about determining what the feelings of the Mexican Americans or the Blacks were?

A I didn't eliminate them down to any category.

Q I know, but I am trying to determine -- You say you had very few --

A They live out there. They live out there among the people; they live in these districts and they have got the same --

Q My question is this. Now, since you apparently relied very heavily on telephone conversations and letters that you received, and you have conceded that you heard from very few Mexican Americans or Blacks, I am wondering if you made any kind of an effort to determine what their feelings were.

A I didn't go out soliciting any, no.

Q Since you didn't hear from them then they just didn't

account for much, is that right?

A Now, you are --

Q Okay. That might have been unfair.

A That is a leading question.

MR. IDAR: That is all.

CROSS EXAMINATION

QUESTIONS BY MR. GREENBERG:

Q Mr. Calvert, my name is Bob Greenberg and I am from Dallas and I represent the Plaintiffs in the Marriott case. And rather than asking you the same questions that have been asked before, I want to adopt all the questions that my brother lawyers have asked and adopt the answers that you have provided, if that is all right with you, and let those be my questions and your answers as well as the other lawyers' questions and your answers. Is that all right?

A That is perfectly all right because I couldn't answer yours any better anyway, so it is all right.

MR. GREENBERG: All right. Thank you.

MR. McDANIEL: Let's take a few minutes break.

(Whereupon, there was a

recess at this time.)

CROSS EXAMINATION

QUESTIONS BY MR. CROWNINGHAM:

Q My name is Brian Cunningham and I am representing Intervenor George L. Allen and others from Dallas County. I am primarily concerned with the redistricting in Dallas County, Texas, where you voted for multi-member instead of single member districts; do you understand?

A Yes, sir.

Q I only have three or four questions. First of all, I understand from your testimony that you were concerned with what the people wanted, is that correct, Mr. Calvert?

A That is what I tried to do.

Q Now, were there any people, black people, from Dallas County that contacted you wanting you to vote for single member districts?

A Not that I recall. There might have been some or telephone calls, I don't remember, as a group, I don't recall.

Q Okay. Do you know how many blacks there are in Dallas County?

A No, I don't, except I know there are a lot of them.

Q Okay. Well, do you remember when the redistricting plan for Dallas County was first presented to you?

1 A (Witness nods head)

2 Q When, sir?

3 A Early in our discussion. And, I might just substitute
4 something here. My question wasn't about Dallas County
5 being multiple and my comment was why -- and I wasn't
6 thinking about Harris County -- Dallas County. Why
7 change it? It has been that way forever that I can
8 remember, hasn't it, countywide -- run countywide? Why
9 change it? That was my thinking.

10 Q And, this is your reason for voting for multi-member
11 over single member districts?

12 A Yes.

13 Q Don't change what has been for a number of years?

14 A That was my thinking.

15 Q And this did not take into consideration what the
16 population of the Blacks were or what percentage they
17 comprised or the number of precinct chairmen there
18 were or anything?

19 A I presumed it had been just the same way for years
20 and years.

21 Q In other words, your primary concern was to maintain
22 in Dallas County the status quo?

23 A That is right. And that was early in the game when we
24 first began to talk about it. I hadn't even begun to
25 think about Harris County.

Q In fact, then you never thought about single member districts for Dallas County, Texas?

A No.

MR. CUMMINGS: That is all.

MR. IDAR: I have just one question.

RECROSS EXAMINATION

QUESTIONS BY MR. IDAR:

Q In reply to Mr. Cunningham's last question you indicated your primary concern was to maintain the status quo in Dallas County.

A Well, that is right. That is my answer there, because early in our discussion --

Q I am just restating --

MR. CUMMINGS: Let him finish his answer.

MR. CUMMINGS: Let him finish. Go ahead.

A I was going to say the same thing. Early in the discussion my thought was, and I was thinking about Dallas County and not Harris County, it has been this way for years so why change it.

MR. IDAR CONTINUES:

Q My question was whether that was the same logic that you used, say, for Bexar County, it has been that way for years so why change it, would that also apply for Bexar County?

A Probably was, but I don't remember discussing Bexar

County like that. I do remember discussing Dallas

County like that early in the game.

Q Would it be fair to say that since you didn't hear from too many people in the other areas, including Bexar, you weren't concerned with changing the status quo from the other areas?

A No.

MR. IDAR: That is all.

MR. McDANIEL: Anybody else?

MR. LIMA: Yes, sir.

CROSS EXAMINATION

QUESTIONS BY MR. LIMA:

Q Mr. Calvert, my name is Earl Lima and I represent Roy Orr, the Chairman of the State Democratic Executive Committee in this case.

A Excuse me. Didn't I hear you talk at that first meeting?

Q Yes, sir.

A Okay. I have got you spotted now.

Q And, I was speaking there, I believe, as Democratic County Chairman of Dallas County.

A As I recall.

Q Mr. Calvert, having been generally familiar with Dallas County for years, you are aware that we have Blacks and people with Mexican American surnames as precinct

chairman is the area where they live in Dallas County, are you not, sir?

A Well, I never had thought of it, but it is reasonable.

Q And, as a member of the Board I want to hand you a copy of a resolution which was passed by the Dallas County Democratic Executive Committee and ask you if you were sent a copy of that resolution that I have now handed you, whereby the Dallas County Democratic Executive Committee composed of all of the precinct chairmen all over Dallas County asked the Redistricting Board to consider leaving Dallas County in multi-member districts so far as the House is concerned? You had the benefit of that information, did you not, sir?

A Yes. You spoke on that part up there.

Q Now, Mr. Calvert --

A Your name is not Lamy. I asked you if you were him to some Lamy, but it is Lema. I remember now.

Q Mr. Calvert, in arriving at your decision they have asked you some one, two, three, but I assume as a member of the Board you considered all the evidence and information that came to the Board and then finally decided to approve the plan that you ultimately signed, is that right?

A That is pretty accurate.

Q Now, you have worked with figures and math and finance

all of your career, have you not?

A Uh-huh.

Q Now, there are small differences, variations, in some of the districts over the State but in your opinion are they as reasonably close as could be?

A Population-wise?

Q Population-wise.

A Yes.

Q They are as reasonably close as you could get them?

A I paid particular attention to that and I thought they were reasonably close. They didn't come down to two percent or anything like that.

Q They weren't perfect but they were as close as you could get and put the puzzle together statewide?

A That is right.

Q Mr. Calvert, I believe you have told us that you are not a lawyer.

A No.

Q And as far as whatever the legal elements that the United States Supreme Court has required be in one of these plans, you asked the lawyers to advise you and guide you on that legal part of it, did you not?

A Yes, absolutely. I expected them to.

Q Yes. And, if there was an element -- whatever the elements were that the law required insofar as race or

particular types of voters -- if the law required that
 that you asked the staff and the lawyers to see to it
 that the plan contained those things?

A: I suppose so; however, whether I asked them or not.

Q: Yes, sir. And, whether you did or did not in your own
 mind take into consideration a particular element, you
 expected the legal advice to examine the plan and see
 as to whether it contained those elements that the law
 required?

A: I suppose so.

Q: And, as far as you are concerned, you feel confident
 that this plan, insofar as the House and Senate for that
 matter is concerned, contains all of the legal
 requirements and is given consideration to all of the
 areas that the United States Supreme Court requires?

A: I don't know much of what they require; I have general
 information that there is some requirements.

Q: Yes, Calvert. In arriving at your decision that you

A: And, I hope we were within it. I thought

Q: And asked the lawyers to examine it with particularity
 and try to see to it that you were within the guidelines
 that the United States Supreme Court requires.

A: That is covered by Crawford's statement that what we
 had done was legal.

Q Yes, sir.

A He was specific about that.

Q Yes, sir.

MR. LIMA: I believe that is all.

MR. CUNNINGHAM: I have two or three more questions.

RE CROSS EXAMINATION

QUESTIONS BY MR. CUNNINGHAM:

Q Mr. Calvert, this is Cunningham again. Do you know how many Blacks there are on the Dallas County Executive Committee?

A I have no idea.

Q Okay. So, you do not know whether they constitute a majority, minority or one percent, do you?

A No.

Q So that the letter that you -- or the resolution that you saw presented by Mr. Lima may not reflect what the Blacks in Dallas feel, is that correct, sir?

A It may not. I don't know.

MR. CUNNINGHAM: Okay.

MR. McDANIEL: Anybody else? Excuse me, Brice, I thought you were through. I am going to ask him a couple or two, but I want to make sure everybody else is finished.

MR. CUNNINGHAM: I have something else

but maybe it will come back by the time you get through.

MR. MARANIEL: I am San Maraniel, Mr. Sykes.

CRUISE EXAMINATION

QUESTIONS BY MR. MARANIEL:

Q Mr. Calvert, is it accurate to say that one of your primary considerations was not the favor or disfavor of any particular group of people?

A Absolutely.

Q In other words, as far as you were concerned these were people and not Black people or white people or Mexican American or German people or Jewish people or Catholic people or what kind of people?

A I wanted to be fair and equal.

Q All right. Now, are you aware of the fact that in certain parts of the State, particularly in the San Antonio area and the Rio Grande Valley, as well as perhaps to a lesser extent in El Paso and Bexar County and various other places that we have a very high Mexican American population?

A Oh, yes, I know that.

Q And, do you know Congressman Kika De La Garza from the Valley?

A Yes.

Q And Congressman Henry Gonzalez from San Antonio?

A Yes.

1 Q Both of whom are Mexican Americans, are they not?

2 A I know both of them.

3 Q And they are multi-member districts both in San Antonio
4 and in the Valley, are they not -- Hidalgo County, or
5 do you recollect that?

6 A I don't remember.

7 Q The point I am driving at is that no particular effort
8 was made in those areas where the Mexican Americans
9 predominate, or very close to predominate, to in any
10 way restrict their political effect there, was there?

11 A No, not from my mind.

12 Q In other words, you just tried to take people and treat
13 them equally?

14 A That is what I tried to do.

15 Q That is all I have.

16 A I might have messed it up, but I tried.

17 MR. McDANIEL: Okay. Thank you, sir.

18
19
20 Robert S. Calvert

THE STATE OF TEXAS

COUNTY OF TRAVIS

SUBSCRIBED and sworn to before me by the

said witness, **ROBERT S. CALVERT**, on this the _____ day of

_____, A.D. 19____

Notary Public in and for
Travis County, Texas

1 THE STATE OF TEXAS I
2 COUNTY OF TRAVIS I

3 I, JACK D. SYKES, a Notary Public duly
4 commissioned and qualified in and for the County of Travis,
5 State of Texas, do hereby certify that, pursuant to agreement
6 of counsel, there came before me on the 28th day of December,
7 A.D. 1971, at 9:00 o'clock A.M., at the Supreme Court
8 Building, Attorney General's Office, Austin, Travis County,
9 Texas, the following named person, to-wit: ROBERT S. CALVERT,
10 who was by me duly sworn to testify to the truth and nothing
11 but the truth of his knowledge touching and concerning the
12 matters in controversy in these causes; that he was thereupon
13 carefully examined upon his oath and his examination reduced
14 to typewriting under my supervision; that the deposition is
15 a true record of the testimony given by the witness; and that
16 the said witness read the same and subscribed his name
17 thereto.

18 I further certify that I am neither
19 attorney or counsel for, nor related to or employed by, any
20 of the parties to the action in which this deposition is
21 taken, and further that I am not a relative or employee of
22 any attorney or counsel employed by the parties hereto or
23 financially interested in the action.

24 IN WITNESS WHEREOF I have hereunto set
25

My hand and affixed my Notarial seal on this the 10 1911 day
of January, A.D. 1911.

JACK D. SYKES

Notary Public in and for
Travis County, Texas

My Commission expires 1st day of June, A.D. 1912.

Barnes

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CURTIS GRAVES, ET AL.

VS.

NO. A-71-CA-142

BEN BARNES, ET AL.

DIANA REGESTER, ET AL.

VS.

NO. A-71-CA-143

BOB BULLOCK, ET AL.

JOHNNY MARRIOTT, ET AL.

VS.

NO. A-71-CA-144

PRESTON SMITH, ET AL.

VAN HENRY ARCHER, JR.

VS.

NO. A-71-CA-145

PRESTON SMITH, ET AL.

APPEARANCESMr. David R. Richards, of Austin, Texas,Appearing on behalf of Plaintiffs Diana
Regester, et al.Mr. Robert M. Greenberg, of Dallas, Texas,Appearing on behalf of Plaintiffs
Johnny Marriott, et al.Mr. Mickey McGuire andMr. Nathan W. Eason, of San Antonio, TexasAppearing on behalf of Plaintiffs
Van Henry Archer, Jr., et al.

APPEARANCES (Cont'd)

Mr. Stuart Melkin

Of Houston, Texas.

Mr. David Berg

Appearing on behalf of Plaintiffs
Curtis Graves, et al.

Mr. Walter Irvin

Of Houston, Texas.

Mr. Cleo Steele

Appearing on behalf of Plaintiff Intervenor
Washington, et al., in the Tyler case.

Mr. Ed Idar, Jr., of San Antonio, Texas,

Appearing on behalf of Intervenor
the Tyler case.

Mr. E. Bruce Cunningham, of Dallas, Texas,

Appearing on behalf of Intervenor
Conrad, et al.

Mr. Earl Luna, of Dallas, Texas,

Appearing on behalf of Defendant
Roy Orr.

Mr. Sam McDaniel, Assistant Attorney General
of Texas,

Mr. Al Curry, of the firm of Fulbright,
Crooker & Jowerski, of Houston, Texas,

Appearing on behalf of Defendants.

1 DEPOSITION OF BEN BARNES, a witness of
2 lawful age, taken on behalf of the Plaintiffs,
3 Diana Register, et al., in the above entitled causes
4 pending in the District Court of the United States
5 for the Western District of Texas, Austin Division,
6 pursuant to the notice heretofore issued and the
7 agreement hereinafter set out, before Opal Locke,
8 a Notary Public in and for Travis County, Texas,
9 at the Supreme Court Building, in the City of
10 Austin, Travis County, Texas, on the 29th day of
11 December, 1971.

12 (The deposition was taken in
13 accordance with stipulations
14 as to deposition of Crawford
15 C. Martin, as follows:

16 MR. RICHARDS: Do you want to consider,
17 Sam, that this is taken by -- I guess it is taken
18 pursuant to notice, inasmuch as General Martin is
19 a defendant, do you -- he is a defendant in some
20 of the cases?

21 GENERAL MARTIN: I am a defendant in some,
22 and not in some of the others.

23 MR. RICHARDS: I didn't know whether Sam
24 wanted to treat it just by notice, or how you wanted
25 it.

MR. McDANIEL: I have no objection to

treating it as if it were taken by notice, and my only thing is, I do want -- I am not going to waive signature on them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And so we -- do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be absent in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master, is that correct, without proving General Martin's unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present General Martin's testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness?

MR. McDANIEL: That is correct. That is correct.

1 MR. LUNA: For the State Chairman, we do
2 not waive our right to cross-examine him at the
3 trial, and in the event he should not be available
4 at trial, we do not then waive the use of this --
5 if he is available, but is not placed on the witness
6 stand, we don't waive our right to cross-examine
7 him at the trial.

8 MR. RICHARDS: Well, let me be sure I
9 understand. Suppose that General Martin is not
10 called as a witness at the time of trial, what is
11 your position with respect to the use of this
12 deposition at the time of trial?

13 MR. LUNA: I reserve the right to examine
14 him in person.

15 MR. RICHARDS: Well, then, at least you
16 are on notice from me that it is going to be my
17 position that if you have questions to ask General
18 Martin, you had better ask them today, because I
19 will intend to offer this deposition as evidence
20 at the time of trial, and you are here pursuant to
21 notice, and at least you have the opportunity to
22 examine him, and it will be my position, if you
23 don't afford yourself that opportunity today, that
24 we will offer the deposition as first-hand testimony.

25 MR. LUNA: I understand.

1 MR. RICHARDS: All right. Sure.

2 MR. LINA: I may ask him some questions
3 today, but I am simply not waiving any of my rights
4 by participating in this deposition that I don't
5 substantiate unless thereby.

6 MR. RICHARDS: Is there anybody else who
7 has got a position, attorneys who are present who
8 want to put any position of record in the case?

9
10 NEW BARNES: I have been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 Questions by Mr. Barn:

13 Q What shall I call you, Governor or Sen?

14 A Sen is fine.

15 Q What about Governor-elect? Franchise?

16 MR. McANILL: Each of you, if you would,
17 please, identify yourself to the Lieutenant Governor
18 and tell him who you represent so he can sort of
19 keep track of your questions that way, he will know
20 in what context they are asked.

21 Q My name is David Barn, and I represent Curtis Graves
22 in the Harris County lawsuit. The questions I am
23 going to ask you pertain primarily to the senatorial
24 district drawn for that area. I am going to show

1 you a map of the new senatorial district that was
 2 taken from the newspaper, but I would ask you if
 3 you are familiar with that map and is it the new
 4 senatorial map for Houston or Harris County?

5 A I will answer it is, assuming that the folks print-
 6 ed the right redistricting map, and I assume they
 7 did.

8 Q Well, now, does anybody have the actual map that
 9 was approved by the Legislature, of Harris County?
 10 (Discussion off the record)

11 Q Here is the map that was approved by the Board, I
 12 believe.

13 A Fine.

14 Q I am primarily concerned with the bases that were
 15 relied on by you and by the other members of the
 16 Board or the Commission in determining that this
 17 would be our new senatorial setup in Harris County.
 18 Just if you would in very general terms -- well,
 19 first tell me how many meetings of the Board you
 20 attended.

21 A Well, I attended all the meetings of the Board with
 22 the exception of one, and that was a public hearing
 23 that was held, and I had a prior commitment. The
 24 Chairman of the Commission, Attorney General Martin,
 25 scheduled the hearing, and I really didn't know of

it till that morning, and I was already scheduled to be in San Antonio to make a speech, but I attended all the meetings other than that one.

Q Well, now, did you talk to other people other than the other members of the Board about the redistricting in Harris County?

A Oh, yes, I took -- we had a lot of correspondence on all the redistricting bills, the House and Senate bills. We had telegrams, I had delegations come see me from throughout the state, I had phone calls, there were a lot of people interested, and of course,

I suppose some of the most interested people in Texas were the members of the Texas Senate that

were interested in running for re-election. I would say that they had more than a passing interest in how the lines would be drawn.

Q I think that we stipulated to that. There is a Plaintiff's Exhibit 2 which is the Chamber of Commerce of Harris County proposed map. Do you know what that is, Sam?

(Discussion off the record)

Q Revision, if you will, a proposed map from the Harris County Chamber -- Houston Chamber of Commerce.

Did you meet and talk with the members of the Chamber of Commerce, Mr. Barnes?

1 A I don't know whether I met with anyone that spe-
 2 cifically said that we are representing the Houston
 3 Chamber of Commerce. I remember what you are talk-
 4 ing about. You are talking about -- it was in an
 5 orange folder. I remember seeing it.

6 Q Right.

7 A I do remember seeing that. I do remember the folder
 8 was orange. I don't know that I was present when
 9 the Chamber of Commerce -- I don't even know who
 10 was the president of the Houston Chamber -- I don't
 11 know if they physically came up here and made a
 12 presentation to the Commission. I don't believe
 13 they -- or maybe they did. I am not -- I cannot
 14 say for certain in my mind whether someone came to
 15 a public hearing and presented this, but I saw it
 16 and knew it was the Houston Chamber of Commerce
 17 map, yes.

18 Q Mr. Barnes, the Houston business community was very
 19 interested in this map, was it not, or in this new
 20 senatorial district?

21 A Oh, I assume that everyone that was interested in
 22 politics in Harris County, the business community,
 23 the labor community, the politically active Democrats,
 24 and politically active Republicans were all inter-
 25 ested in the map.

Q Not just talking for one moment about the business establishment in Houston, they were very interested in this, weren't they, money matters?

A Oh, I think it's a safe assumption that there were some people -- it's always hard to determine who the business establishment is or who the labor establishment is, but yes, there were certainly

businessmen in Houston that were interested in this redistricting map.

Q Well, now, in the past three days, Mr. Barnes, we have discussed many people involved with the redrawing of the map. No one seems to know, no one seems to remember the words, corporate income tax, and I am just wondering who you would say constructively represents the anti-corporate income tax group from Houston.

A Oh, I would say that the majority of the businessmen in Houston were opposed to a corporate income tax while some of them were for it, but not to editorialize the way you have asked the question, but I will use my prerogative till you stop me. As far as the corporate income tax and the Senate or House redistricting, I didn't hear of a corporate income tax or did the corporate income tax ever cross my mind during redistricting. That came about after

the redistricting map was drawn, and someone made that political accusation.

Q Let me ask you this. Did you ever talk to Everett Collier about the senatorial districts; did he offer his advice on how they should be drawn?

A I don't know that Everett Collier offered us specifically -- yes, I talked to Everett Collier and talked -- I think I talked to Bill Hobby also about -- talked to both publishers of papers. I am not certain that I talked to Bill about senatorial redistricting. I talked to Bill about the fact that I would like to see individual member districts in Harris County in the House redistricting. I know we had a discussion about that.

Q What about Everett Collier, did you talk to him about the senatorial redistricting?

A Yes, I am sure that I talked to Everett Collier about House and Senate redistricting.

Q All right. Let me ask you this. He is the publisher of a newspaper there. In your discussions with him did Everett Collier ever mention his

motivation coming to you; what was his reason for coming to talk to you about this map, other than civic pride and that sort of thing?

A Well, I am not going to doubt that the reasons why

1 a newspaper publisher -- I talk to newspaper pub-
 2 lishers about various and sundry issues that come
 3 before the Lieutenant Governor. I assume that he
 4 was interested in it as far as Harris County. I
 5 know of one thing that nearly everyone from Harris
 6 County talked to me about. They were very con-
 7 cerned about Harris County, we taking the surplus
 8 in Harris County and dividing it into four or five
 9 senatorial districts, which was opposed by several
 10 different groups representing rural areas of Texas
 11 and several rural senators who didn't want to --
 12 who would have loved to have taken the surplus in
 13 Harris County and divided it several different ways
 14 to protect their district --
 15 Q To protect themselves? People through the years
 16 A Right, and so --
 17 Q Was Everett Collier interested in that? Did he
 18 A Yes. Everett Collier, I think if my memory serves
 19 me correctly, that that was the main reason for
 20 Everett Collier talking to me, was to make certain
 21 that Harris County got all the representation they
 22 were entitled to, as was the Senate or House --
 23 Q Well, now, you are familiar with -- as a politician
 24 of long standing in the state, you are familiar with
 25 Harris County and Harris County's labor establishment

and its business establishment, are you not?

A Well, I am---

Q To a degree, at least.

A Well, I would like to claim that I was a lot more familiar with both the labor and the business establishment in Harris County, but---

Q Well, right now---

A Yes, yes, I am aware that they do exist.

Q All right. Now, is it unfair to state that Everett Collier and Mr. Searoy Bracewell of Houston and Harris County have established themselves as foes of the corporate income tax before you, with you, talking to you?

A Now, I would say that Mr. Searoy Bracewell, yes, was retained as a lawyer to lobby against the corporate income tax, but I have got to say that Everett Collier never has asked me how the corporate income tax was coming or whether -- I don't know his paper -- I am not even aware of what position his---

Q He doesn't seem to be interested in that to you?

A He has not discussed it. I don't know. His paper may have taken an editorial position, but I am not aware of any editorial position that the Chronicle has taken as far as corporate income tax.

Q Now, Scarry Brannell has talked to you about the corporate income tax, hasn't he?

A Yes, he has.

Q He talked to you about it during the period of time that the constitutional map was being redrawn?

A He talked to me about it. They were here then.

Q Before?

A Are you talking about during the session of the

legislature?

Q I am talking about the period of time preceding the

adoption of this map, did Scarry Brannell ever

talk to you about the corporate income tax?

A The corporate income tax battle was fought back

during the session of the legislature. That was

some three months prior to the time this bill was

being drawn. No, Mr. Brannell never talked to me

about corporate income tax while this bill was

being drawn.

Q But at least, it preceded the adoption of this bill?

A You are talking about--

Q The discussion?

A Oh, you are talking about a discussion I had back

when the legislature was writing the tax bill last

May, I guess it was, and what was the date that we

adopted this bill?

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would think the criticism that was in the Dallas paper about Senator Henry having a perfect district -- he was one of the number one advocates. I would think Senator Schwartz -- you could go down the list of the people that voted for it. In my mind there was no relationship whatsoever between the corporate income tax and the senatorial redistricting bill, and no discussion with any individual in regard to the Senate lines will be drawn to either pass or not to pass the corporate income tax.

Q And to your knowledge, did -- you say there was no discussion. I suppose you are referring to yourself -- no discussion about that?

A I was not part of any discussion whatsoever.

Q Everett Collier and Searcy Braggmell and Crawford Martin did not hold a discussion that you know of about the corporate income tax?

A Not to my knowledge, and the Attorney General and

I never had a discussion about corporate income

tax and period. I don't remember discussing cor-

porate income tax over with the Attorney General.

Q Do you know if Crawford Martin resided an office

outside of this office during the period of time

this map was being drawn?

A No, I do not.

Q Mr. Barnes, let me shift over to something else.
I am going to bring you a map. I am going to ask
you to accept my--

MR. GREENBERG: Can we have it marked
so we know what we are dealing with?

(The document was marked for
identification as Barnes
Exhibit No. 1.

MR. BERG: What this is is a map that
shows poverty areas and the more than fifty per
cent black census tracts. It is marked Barnes No.
1.

MR. LUNA: There is nothing like this in
evidence.

MR. McDANIEL: Well, now, wait a minute.
That is your assumption, what it shows. I want
that very clearly to be reflected in the record.

MR. BERG: Okay. We will be prepared to
put that in later on, Sam.

Q (By Mr. Berg) Mr. Barnes, you are familiar with
Harris County, Texas, are you not, with its makeup?

A Yes, I am familiar with it, but if you are asking
me if I know what income people or really what the
color of the skin of the people that live in the
various and sundry precincts, if you say Precinct
223, I can't pass that exam.

Q No, but in general, are you familiar with the fact that the core of the city is heavily a ghetto area or heavily a black area, the central city of Harris County?

A Yes, I am generally familiar with the fact that there is a high concentration of black Texans that live in the center part of the City of Houston.

Q Well, that is what we are concerned with, is the way the lines were drawn. It has been perhaps erroneously said that you are primarily responsible for the drawing of this map the way it is drawn. Would you say that you of all the members of the Board drew this map?

A No, I wouldn't say that.

Q Was it equally divided among the five members?

A No, I would say that the -- I would say that this map, particularly the lines in the metropolitan areas, are a product of staff work more than the members of the -- and I don't know, I haven't had the benefit of what the other members of this Commission have testified to in the past few days.

Has everyone given a deposition but me, am I the last one? But I do know that -- I would say that the lines in the urban areas in the Senate redistricting bill and in the House redistricting bill

are more a result of staff work than they are of any--

Q Let's talk about Harris County, then.

A Okay.

Q I see what you are driving at. What staff members on your staff drew these lines?

A Well, I would say -- now, I can't tell you exactly who drew those lines, but I can tell you that the two people that worked a great deal on my staff on these lines were Robert Spellings and Greg Hooser, who was the -- and I don't know the -- Johnny Potter and Bob Johnson. I don't know who else in the Legislative Council. And Sam, you will have to help me about who from the Attorney General's office did most of the staff work, but I do know the two people on my staff that are on the Senate staff that did most of the work.

Q Well, it is our impression, at least my impression, that this map was done primarily with Mr. Spellings, Mr. Hooser, and one member of the Attorney General's staff who we have been unable to isolate or pinpoint. Would that be a fair statement?

A Well, I don't know about what other parties or what other staff personnel participated in drawing this map. I do know that Mr. Spellings and Mr.

Hocser played a major role in it.

Q And they of course operated under your instruction?

A That is -- well, not necessarily did they do everything they did under my instruction, but yes, they worked for me.

Q All right. If they worked for you, Mr. Barnes, is it safe to assume that you had something to do with instructions on how to draw Harris County?

A Well, I did not tell Mr. Spellings or any member of the staff how to draw the lines, as far as which precinct included which district, I did not give those specific instructions.

Q So were you unconcerned with what precincts--

A No, not that I was not concerned, but I told them to draw the map and then I would look at it after they completed the map that they thought fairly apportioned the senatorial districts in Harris County, and then I would do it. Certainly I had the right to change any precinct line or any -- if I could get two other members of the Commission to vote with me, we could have changed anything we liked.

Q Is it safe to assume, then, you delegated your responsibility in that regard, although you reserved the right to change anything, you delegated the first map, at least, to Hocser and Spellings, told

1 them to come up with what they thought was fair.

2 MR. McDANIEL: I am not sure that I will
3 agree with that delegation of responsibility. I
4 am going to ask you to rephrase that question,
5 please, David.

6 MR. BERG: Well, is that an objection
7 or are you---

8 MR. McDANIEL: Yes, I don't think it is
9 a fair question.

10 MR. LUNA: Are you going to overrule
11 the objection?

12 MR. BERG: Well, I have overruled the
13 objection again.

14 MR. McDANIEL: Then I will just instruct
15 the witness not to answer the question.

16 MR. BERG: You are in contempt.

17 Q (By Mr. Berg) All right. Let's put it -- you
18 are not answering the question?

19 A I relied on staff work, certainly, but I didn't
20 delegate any of my responsibility because I found
21 out, as Harry Truman said a long time ago, that
22 the best stop here. It did stop on my desk. I
23 was going to have to live with any lines that I
24 signed my name to, so I am here to take responsi-
25 bility for the lines. I am not fixing to try to

pass responsibility on to my staff.

Q Well, Mr. Barnes, what did you tell them to do in drawing -- what guidelines did you give them?

A I told them to give Harris County the representation that they were entitled to, as far as not to divide the surplus among several senators. It was a late decision that finally, that Senator Schwartz got what, five thousand people or the Galveston district got five thousand people out of Harris County.

Q So the first guideline pertained to population?

A That's right.

Q Make sure that population was evenly divided?

A That's right, and I was very concerned as to -- that there was a district that had at least the same percentage of black population that the present district that was being represented by a black senator had.

Q Now, that is why we are here. The present district that has been drawn, the present senatorial district that has been drawn, or actually the 11th, the old 11th, is a great deal different from the new 11th district.

A But what is the percentage of black population?

Q Well, that is exactly what I want to ask you. What

1 do you understand to be the percentage of black
2 population in those districts?

3 A I understand the percentage of black population
4 to be slightly higher, around one per cent higher
5 than the population in the -- the black population
6 in the district that is now represented by a black
7 senator.

8 Q Would you have been concerned if that population
9 of blacks in that district had been ten percentage
10 points lower, would it have changed your mind any?

11 A Well, with my direction I knew that the staff
12 wasn't going to come up with one ten percentage
13 points lower.

14 Q Would it surprise you to know that there are only
15 thirty-eight per cent blacks in that district now?

16 A Well, there were less than thirty-eight per cent
17 blacks in the district that Senator Jordan was
18 elected from originally. I was told by my staff
19 and by the Legislative Council.

20 Q Would it have changed your position any on how to
21 draw those lines if you knew that Barbara Jordan
22 had started with forty-eight per cent black within
23 her district the first time she ran?

24 A Are you telling me that that is a fact?

25 Q I believe it to be a fact. Barbara Jordan testified

Monday, and there is some question about that deposition, but she said she started with forty-eight per cent black and now there is thirty-eight per cent black.

A Well, I was advised by the staff that this district had slightly less than one per cent more black population.

Q Would that have changed your mind if that were the case?

A It would have certainly had some bearing on it.

Q Because then you are cutting out black representation?

A Well, I don't know that you are cutting out black representation. A city councilman was just elected from the City of Houston running city wide, and the percentage of black population in the City of Houston is certainly not any forty-eight per cent.

Q Do you consider -- you seem concerned, though, that if those be the facts, I can't help but note some concern on your part. There must be some basis for that concern, then, if there is a ten point spread.

A Well, I am certainly concerned if the staff made a ten per cent error, which I would certainly like to -- I would certainly like to see the breakdown

1 on this because---

2 Q Okay.

3 A ---that is contrary to---

4 Q All right. The present setup or the present --
5 regardless of the differential now in the percentage
6 of blacks, the present setup takes the core city
7 area of Harris County census tracts which you can
8 see better over here around 208 and places it in
9 the same precinct or in the same senatorial dis-
10 trict with River Oaks. You are familiar with
11 River Oaks in Houston?

12 A Yes, I am familiar with River Oaks.

13 Q Would you agree with me that that is a very opulent,
14 affluent section of Harris County, probably one of
15 the richest sections in the United States?

16 A Well, I will take your word for that. I know it
17 is a wealthy section.

18 Q Okay. Lieutenant Governor Barnes, is there any
19 community of interest between the core of the city
20 which is included in the River Oaks senatorial
21 district?

22 A Well, now---

23 Q Do they have a community of interest, in your
24 opinion?

25 A I don't think we can ever draw a bill that puts

1 everyone that has -- that makes exactly the same
2 amount of money and has exactly the same interest
3 in a district. I think you can argue that minority
4 groups might be better off if they were represented
5 in several different districts than if they were
6 all put in one district, as far as how a member of
7 the Texas Legislature is going to act or not act,
8 as far as legislation concerning them, so there is
9 the philosophical argument that can be made for
10 either position.

11 Q Well, isn't that, Mr. Barnes, exactly what they
12 have had over the years, representation spread
13 throughout, not particularly a black for blacks,
14 but they have been represented by people who hold
15 political views far -- entirely different from
16 their own?

17 A Well, I don't know that in Harris County that that
18 would be true in the Texas Senate. There is one
19 Republican senator that I have some reservations
20 about what kind of job he has done in representing
21 them, but I think -- and I don't know what purpose
22 it serves to discuss personalities here, but I
23 would say Harris County, with Senator Wallace,
24 Senator Jordan, Senator Brooks, and Senator Schwartz,
25 I would say that in my own opinion -- and it is

1 certainly an opinion -- that the minority groups
2 in Houston in the last session of the Legislature
3 received very fine, outstanding representation.

4 Q Well, now, in the Senate -- let's talk about the
5 Senate for a second. The way these maps are drawn
6 isn't the black vote sort of evenly divided or
7 diluted among these three -- 15, 11 and 6; isn't
8 the black vote sort of meshed in with more con-
9 servative white voters in those three districts?

10 A Well, I would have to spend some time studying
11 the map to be able to answer that question.

12 Q But as a general fact, aren't you aware of the
13 fact that the black vote has been diluted in
14 Houston among the white voters in the various
15 senatorial districts?

16 A No, I am not -- I am not ready to say that I agree
17 with that.

18 Q Do the blacks now -- is it your position that the
19 blacks have the same voting strength in the sena-
20 torial districts as they did before?

21 A Well, I must confess that if your facts are cor-
22 rect about the ten per cent less in the senatorial
23 district, ten per cent less black representation
24 in the senatorial district, this is a fact that I
25 did not have when I voted on this bill.

1 MR. BERG: Could we go off the record
2 a minute. Please and say exactly the same thing

3 MR. LUNA: Armstrong testified yesterday
4 the same thing. Matter of fact it was yesterday

5 (Discussion off the record)

6 MR. IDAR: Are we back on the record?

7 MR. BERG: Yes, going to the next one.

8 MR. IDAR: May the record reflect that
9 as we were off the record, Mr. Luna made the comment

10 to Mr. Barnes here that Mr. Armstrong testified
11 to substantially the same thing yesterday, and may
12 I request counsel not to place a matter before the

13 witness as to what other witnesses testified to.
14 MR. LUNA: Let the record show that was
15 not made after we went off the record, that the
16 statement was made before we went off the record.

17 MR. RICHARDS: I guess the record will
18 reflect that.

19 MR. LUNA: And I am also happy to comply
20 with the instructions of my distinguished opposi-
21 tion.

22 MR. IDAR: I am not seeking to instruct
23 you, Mr. Luna. I am just raising a proper objection
24 to your informing the witness of the deposition.

25 Q May I resume now?

1 A Yes, you certainly may, as far as I am concerned.

2 Q One point that I do want to stress with you: are
3 you aware that the percentage of blacks within
4 Barbara Jordan's senatorial district, no matter
5 what the beginning percentage was -- I may be
6 wrong, but no matter what the percentage of---

7 MR. LUNA: Excuse me. May I?

8 MR. BERG: Yes.

9 MR. LUNA: So that we will understand
10 each other that we don't have any improprieties,
11 I have not understood that these witnesses have
12 been under any rule and that we are not to mention
13 to any witness what some other witness has testi-
14 fied to. Counsel in examining this witness has
15 told him on the record what Senator Jordan and
16 several other people have testified to. Now, are
17 we supposed to have some agreement here that we
18 are operating under? Are we operating under some
19 agreement that none of us are to mention to a
20 witness what anybody else has testified to or only
21 Earl Luna?

22 MR. BERG: Earl, I just want to get --
23 ask some questions.

24 MR. McDANIEL: We have no agreement that
25 I know of, and I might observe that Commissioner

1 Armstrong was in the room yesterday when we were
2 taking Mr. Hooser's deposition, so we have obviously
3 not observed any such agreement.

4 LT. GOV. BARNES: Let me say it is not
5 important to me what anybody else testified to.
6 You all take my deposition.

7 MR. LUNA: The objection indicated that
8 I had said something inappropriate. If anybody
9 thinks it is, I would like to know about it.

10 MR. IDARI: Well, if I can explain my
11 position, it is customary for counsel in interrogat-
12 ion a witness in a deposition to make reference to
13 testimony that has been adduced to other witnesses.
14 That is when the counsel who is actually interrogat-
15 ing the witness does so. My objection was based on
16 the fact that Mr. Luna is here representing defend-
17 ants to this lawsuit that are on basically the
18 same side of the issue as Mr. Barnes is and that I
19 think it is inappropriate at the particular moment
20 when Mr. Luna made his remark to advise Mr. Barnes
21 that the testimony in question had been substantially

22 testified to along the same line by Mr. Armstrong
23 yesterday, in view of the fact that Mr. Luna was
24 not the attorney that was in the process of taking
25 the deposition at the time he made his remark, and

1 I meant nothing offensive toward Mr. Luna or any-
2 body else, just felt that we ought to proceed upon
3 the rule.

4 MR. CUNNINGHAM: Can't we go off the
5 record for a minute?

6 (Discussion off the record)

7 Q (By Mr. Berg) I would like to know, and you can
8 enlighten all of us on this, whether or not Barbara's
9 district increased measurably in percentage of
10 blacks, no matter what the starting percentage was;
11 didn't she have a strong increase in the numbers
12 of blacks and percentage of the blacks in her dis-
13 trict during the period of time she was in the
14 Senate?

15 A Well, I would assume that -- I do remember that
16 Barbara's district gained in population, but now,
17 I don't know how much it gained as far as --
18 numerically, as far as number of people that came
19 in the district. No one has told me this, but I
20 would assume probably that some of the white popu-
21 lation moved out of the core of the city -- I mean
22 if this is true.

23 Q Right.

24 A I have read this in the newspaper, not about
25 Houston, but about other large cities, so I really---

Q If that assumption is made then would it be fair to say that less than one per cent increase that you were relying upon in black population did not match proportionately the increase in black population in her district?

A But I thought it very important to look at the percentage of population at the time the black senator was elected, because I mean that is what pleased me, and I think that is what was good to the black community, the percentage of population that elected a black senator.

Q Right. And also the area they were located in would be very important, wouldn't it? You wouldn't make the assumption, for example---

A I think a black senator can represent any area of Harris County, as I think a white senator can represent any area of Harris County.

Q Of course. That is understandable, but what I am saying is if your concern is -- say a forty-two per cent black precinct or black district elected a black senator, and that is what you were concerned with, that figure, starting point, Barbara Jordan first time out in the race. Isn't your concern also then that forty-two per cent be maintained at least at the same level and not be placed in an

1 area where, say, whites voted heavier than where
2 they had before?

3 A Well, I was hopeful that the lines could be drawn
4 in which that there would be a percentage of black
5 population in Harris County comparable to the per-
6 centage of black population within the framework
7 of the district that elected the black senator.

8 Q Did Bob Armstrong come to you at some point and
9 voice a complaint about the senatorial districts
10 in relation to the racial problem?

11 A Well, it may have been at the time that we adopted
12 the map or at the time the Commission met -- I am
13 trying to remember -- but there was a discussion
14 about moving a line, and I cannot tell you -- and
15 we can find out from Spellings and Mooser -- but
16 Bob did want to move a line, but I think it was --
17 maybe it was the day that we were adopting the map.

18 Q You don't remember his specific complaint?

19 A No. I think his concern -- it concerned, it was
20 concerning -- I don't know whether it concerned the
21 black district or one of the other districts. It
22 may have been concerning the black district.

23 MR. BERG: Can you excuse me one moment?

24 (Discussion off the record)

25 Q Did Senator Jim Wallace ever come to see you about

1 the senatorial district; do you remember that?

2 A Yes, I talked to Senator Wallace. I talked to
3 every member of the Senate.

4 Q All right. Now, what did Senator Wallace have to
5 say to you?

6 A Well, he was -- Senator Wallace was greatly con-
7 cerned about the presentation that had been made
8 by the Houston Chamber of Commerce or about the
9 map that was in the orange folder, whoever got it
10 to the committee, because it dramatically changed
11 his district. I have forgotten now, but he had
12 something like eighty or maybe eighty-five per
13 cent new population, people that he had not repre-
14 sented before.

15 Q What were your -- I am going to shift off this for
16 a moment. I would like to know what your major
17 concerns were, not necessarily the guidelines you
18 gave Spallings and Hooser, but what were your major
19 concerns in drawing these lines other than that
20 they be fair and everybody get their fair represen-
21 tation?

22 A Fairness and the constitutionality. I had had all
23 the redistricting I wanted or ever want.

24 Q Constitutionality implies that they -- certain
25 basic fundamental guidelines exist, doesn't it; I

mean for instance, were you concerned that each area be compact?

A Yes, I think compactness was a factor that certainly was in my mind. I mean to what degree of compactness -- I mean that is always a matter of opinion -- and how to define the cities. There were people that thought that cities ought to be divided in pie shapes. There were those that thought you ought to start at the core of the city and redistrict out, and this is the reason that this district ended up like this.

Q But what did you think, what did you think?

A Oh, I didn't have -- if you are asking me if I had a plan in my mind that I said, now, this is the way that it should be done and this is right---

Q No, no. What I am saying is, why did you approve this; what was it appealed to you about this map with these districts in it; what guidelines or what criterion did they fulfill for you in your mind?

A Well, I think that Harris County was given their complete representation. There was not a big division of a large part of the county into several other rural districts, and we did start -- these districts do start in the heart of the city and

work out. I felt like that as far as community of interest that the suburban area in the district that almost goes around Harris County, that that was best served. This voting precinct is certainly not compact with that one, but neither is Bell County with Refugio County.

Q Are you familiar with the makeup of the -- that there is labor and business and there is the clan out in this area? I mean just incredible -- incredibly diverse political viewpoints represented by district number 137?

MR. McDANIEL: The what out in this area?

A The clan.

Q The clan.

A I have got to say that I didn't know the clan was---

MR. GREENBERG: What clan?

MR. McDANIEL: What clan are we talking about?

Q Well, let me state that another way. Are you aware of the diverse viewpoints out in this area of -- in number 137?

A Oh, I was certain that there were some diverse viewpoints. Let me say this. There are some diverse viewpoints in a lot of the senatorial districts. In my home senatorial district, for

instance, there are very diverse views.

Q How many times did you meet in Crawford Martin's temporary office with Mr. Spellings and Mr. Hooser Crawford Martin and Everett Collier about this?

A Now, wait a minute. Mr. Martin's temporary office. I never met with Crawford Martin in any temporary office. What temporary office are you talking about?

Q I am asking you if you were aware of perhaps a temporary office rented by anyone for the purpose of discussing this matter in the presence of Crawford Martin, yourself, Hooser, Everett Collier, Spellings, any combination of those.

A I have no knowledge of any temporary office that the Attorney General has rented.

Q Okay.

A I mean as far as -- I would say -- I don't know where Hooser and Spellings were all the time, but they worked many long hours, but most of the times that I knew of their working, they were working in the Lieutenant Governor's office.

Q Where were you---

MR. McDANIEL: Might I say for the sake of the record that if the Attorney General has any secret office, certain members of his administrative

staff know absolutely nothing about it either.

A We met in the Attorney General's -- I came over to the Attorney General's office.

Q In the hours prior to the signing of this bill, forty-eight hours prior to the signing of this bill, can you kind of retrace your steps for us?

A No, I really can't.

Q Were you in Austin, do you remember?

A No. We can go back and get my calendar from my staff, but---

Q Could we do that; could you make that available to us?

A Yes, I will be happy to.

MR. BERG: Sam, any objections?

MR. McDANIEL: No, I have no objection.

A I really -- and I am not trying to evade your question, but if you asked me to go back one week from today in the past twenty-four hours and track my steps, that would be difficult for me today. I was in San Antonio the day, though, that they met one time, and I got all that bad publicity for not being there when I didn't know they were going to meet, and I was already down there fixing to make my speech. I do remember that.

Q Are you familiar with the new United States

1 Congressional seat that was drawn in Harris County?

2 A Yes, I am.

3 Q Did you ever talk to Barbara Jordan about that
4 particular seat?

5 A Yes, I suppose I talked to Barbara about it. I
6 mean I talked to all the members of the redistrict-
7 ing committee, and she was vice-chairman of the
8 committee. I talked to them about congressional
9 redistricting. If you are asking me if I ever
10 said, "Barbara, does this new district go here,
11 here, here, here?" no. If you are asking me if I
12 had a precinct by precinct discussion with Barbara
13 Jordan over than congressional district, no, I did
14 not have.

15 Q You know, it just occurred to me what I implied by
16 asking a question about that clan. I am very sorry.
17 I didn't mean to imply you knew about the clan.

18 A I was just going to rely on the fact that you knew
19 what the clan was doing because I never -- I didn't
20 know that they were in Harris County and don't have
21 any communication with them.

22 Q When this was submitted to Bob Armstrong, when
23 this map, the final map, senatorial map, was sub-
24 mitted to Bob Armstrong, had he been consulted in
25 the drawing of these lines, to your knowledge?

1 A I really don't know how much time Bob spent with
2 the Attorney General's staff and my staff that
3 was drawing lines. Let me make it very clear. I
4 don't know what the other people have testified to
5 here, but as far as all members of the Commission
6 had the right to go off and draw all the maps they
7 wanted to and had their right to have their staff
8 there; it was an informal type approach to this.
9 We had twenty -- what did we have, twenty-three
10 days, Sam? I forget.

11 MR. McDANIEL: Yes.

12 A And my objective was to get the job done in both
13 bills as fair as possible, and I don't know -- I
14 know Bob Armstrong was consulted. I saw Bob in
15 my office many times meeting -- well, not many
16 times. I saw him in my office several times
17 meeting back with Spellings, and he and I would
18 visit about it briefly, but I don't know how much
19 time Bob Armstrong spent on this. You will have
20 to ask him.

21 Q All right. The geographic boundaries represented
22 by the new senatorial districts, do they seem fair
23 to you, naturally drawn; was this a consideration
24 of yours that---

25 A The geographic boundaries of the new senatorial

1 districts?

2 Q Yes. Does it make geographic sense in terms of
3 bayous and highways and that sort of thing?

4 A Well, I really cannot say that I have taken the
5 senatorial district map and gone down each divi-
6 sion line to see about streets and bayous. I
7 know in the House redistricting bill that in South
8 Texas we made a mistake, I think, in dividing a
9 town right down main street, and two brothers came
10 to see me, very angry. One of them lives on one
11 side of the street and the other one lives on the
12 other, and they are in different legislative dis-
13 tricts now, very upset about this. This is going
14 to happen when you try to---

15 Q Was this a consideration of yours, the geographic
16 boundaries you were drawing?

17 A Well, yes, it was a -- but I don't think a geographic
18 boundary was one of the highest considerations or
19 had the highest---

20 Q Priority?

21 A ---priority.

22 Q What was the highest priority in your mind?

23 A Getting a map drawn that could get three votes of
24 the Commission that was as fair as possible to the
25 eleven million people in Texas that disrupted the

1 political climate as little as it could be in 1971.
2 In twenty-three days one of the great problems I
3 had was just returning the phone calls and talking
4 to all the people that wanted to talk to me about
5 it. I was very discouraged when the House did not
6 draw a constitutional bill and when the Senate did
7 not in the time allocated draw its own senatorial
8 redistricting bill. I was extremely disappointed
9 with the Governor of Texas when he would not call
10 a special session to the purpose of senatorial
11 House redistricting, as I thought he should have
12 done when the Legislature did not complete sena-
13 torial redistricting.

14 Q Now, so then I can take it geographic boundaries
15 were sort of at the bottom of the list of priorities?

16 A I don't know whether you can get it, put it at the
17 bottom, but---

18 Q Okay. At least it did not rank at the top. We
19 established that. And whatever did rank at the
20 top, Lieutenant Governor, you are convinced -- is
21 it your position now that the black vote was or
22 was not diluted by this map?

23 A No, I don't think the black vote was diluted.

24 Q Okay. Is it your position that there will be
25 representation of blacks, fair representation of

1 blacks on the basis of the coming elections although
2 you can't predict them?

3 A Well, I mean I certainly hope that there is fair
4 representation of blacks and anyone else, no
5 matter who wins, but you are asking me to specu-
6 late what is going to happen on an election in
7 Harris County, and I am willing to speculate on
8 what is going to happen on one election in Texas,
9 but outside of that, that is as far as I am going
10 to speculate in 1972.

11 MR. BERG: That's all I have.

12
13 Questions by Mr. Eason:

14 Q I am Nathan Eason from San Antonio. I represent
15 Mr. Van Archer and others who have attacked the
16 senatorial and legislative redistricting bill.
17 Mr. Van Archer is the chairman of the Bexar County
18 Republicans. Now, I would like to explore a little
19 bit further this area whereby Mr. Hooser and Mr.
20 Spellings, possibly in conjunction with others,
21 drew up the lines, we will say for Harris County --
22 that is what you were discussing. Now, for whom
23 was Mr. Spellings working?

24 A He was working for the Lieutenant Governor's office.

25 Q And for whom was Mr. Hooser working?

1 A Mr. Hooser is a young man that worked for the
2 Senate committee on congressional and legislative
3 reapportionment.

4 Q Well, of course, that work, I suppose, would have
5 ceased prior to the adoption of these plans, how-
6 ever.

7 A Yes, that's true.

8 Q So---

9 A Well, that's assuming that -- no, it didn't really
10 cease because no one really knew what -- there was
11 a suit that was filed or threat of suit to test
12 the constitutionality of these five man meeting,
13 and there was always---

14 Q The possibility---

15 A ---the possibility of a special session any time,
16 and the decision was made by the chairman of the
17 redistricting commission -- committee. Senator
18 Word asked to retain Mr. Hooser until some form
19 of disposition had been made so far as legisla-
20 tive reapportionment was concerned.

21 Q But Mr. Word, -- correct me if I am wrong. Mr.
22 Word, of course, was not present and working over
23 Mr. Hooser at this -- after the -- at the time that
24 the final plans were being drafted?

25 A That is correct, as far as the House and Senate

1 are concerned, yes.

2 Q Yes, sir. Now, under whose jurisdiction, control
3 and authority was Mr. Hooser working at this time?

4 A Well, I would assume that as far as who was signing
5 his check, he was on the payroll of the Texas
6 Senate.

7 Q Yes, sir. But who was giving him directions --
8 and I understand you to say, and you correct me if
9 I am wrong, that he was working for you, at least
10 under your---

11 A Well, he was working under the supervision of Mr.
12 Spellings, and thereby working for me. I had most
13 of my conversation about redistricting with Mr.
14 Spellings and not with Mr. Hooser. He was present
15 part of the time, but---

16 Q In other words, Mr. Hooser, then, as I understand
17 it, would have been under Mr. Spellings.

18 A That's true.

19 Q And Mr. Spellings was working for you.

20 A That's true.

21 Q Now, again, Governor Barnes, on these Harris
22 County lines for the senatorial redistricting --
23 correct me again if I am wrong -- did you -- we
24 won't use that word delegate. Did you instruct or
25 did you, under your supervision and control, did

Mr. Spellings and Mr. Hooser come up with the lines that ultimately resulted in the Harris County senatorial redistricting?

A Well, now, as far as who drew this specific line right here, I cannot answer that question. I don't know whether a member of the Attorney

General's staff or whether Mr. Hooser or Mr. Spellings. As far as who made that exact determination, I cannot answer that question.

Q All right. When the plan that is given you here now and the one that was accepted by the senatorial redistricting committee, when you first saw it, was it presented to you by Mr. Spellings and Mr. Hooser?

A It was presented to me -- I am not certain Mr.

Hooser was there. He may have been. It was presented to me by Mr. Spellings.

Q And then you do not know of your own knowledge who actually drew in the lines?

A Well, I assume that -- I assume that Mr. Spellings and whomever in the Attorney General's office that was there helping draw the lines either drew the lines or supervised the drawing of the lines. The Legislative Council may have been involved in this also.

1 Q You mean Mr. Johnson and his office?

2 A Yes.

3 Q Possibly you answered this. I don't recall. Do
4 you know whom in the Attorney General's office
5 was doing the actual drafting of the lines?

6 A No, but if Mr. McDaniel can help me on it, there
7 were several different assistant Attorneys General
8 involved. Sam, could you answer this question?

9 MR. McDANIEL: Yes, I would be happy to.
10 Mr. Martin has already answered it in his deposition.
11 Mr. Louis Jones and Mr. Cam Lowry of our
12 office did most of our map drawing, and I, along
13 with Mr. Pat Cain and Mr. Albert Walker, had some
14 contact with the various other staffs working on
15 the project. I might even add I tried my hand at
16 drawing maps myself and didn't get very far and
17 quit.

18 Q Do you know of your own knowledge, Mr. Barnes, who
19 in the Attorney General's office was working
20 closely in conjunction with Mr. Spellings, if you
21 know? If you don't, why---

22 A No, I really -- it is my understanding, and if my
23 memory serves me correct, that there were five or
24 six assistant Attorney Generals that were involved
25 in the drawing of the lines and working on the

1 redistricting. I talked to Mr. McDaniel and Mr.
2 Pat Bailey and Mr. Albert Walker. I believe that
3 I was in the office when Mr. Jones was there, and
4 a couple of the fellows I didn't even know. I can't
5 tell you who was present when these lines were
6 drawn. I do not know.

7 Q Yes, sir. Now, I believe you further stated that
8 you of course did have -- the buck stops here.

9 A Yes, sir.

10 Q You did have the final say when---

11 A Well, I was one of the five.

12 Q Well, when your employee, Mr. Spellings brought
13 it to you for approval, you did have the final
14 say in regard to that, is that correct, and I don't
15 mean not -- naturally, the other members of the
16 Board had the right to, but I mean when Mr.
17 Spellings presented the draft to you, as far as
18 your office was concerned, you did have the final
19 say--

20 A That's correct.

21 Q ---as to whether or not this.

22 A That's correct.

23 Q Do you recall whether or not you made any changes
24 in the final draft as presented to you in the
25 Harris County senatorial plan?

1 A To the best of my knowledge, I did not.

2 Q Do you recall whether or not you made any changes
3 in any of the senatorial redistricting plan as
4 proposed to you by Mr. Spellings?

5 A As far as -- this took place over a period of
6 time, and there were individual areas of the state
7 where that Mr. Spellings would bring a plan to me
8 and say, "What do you think of this?" and I would
9 look at it -- and this was primarily in the rural
10 areas, because it's very difficult for me, without
11 any more knowledge than I had of exactly where
12 these lines go in these cities, to be able to spend
13 a great deal of time getting involved details.
14 During the week or ten-day period we were working
15 on this I looked at several different plans. As
16 far as the final plan, I don't recall of any changes
17 that I made in the plan that was adopted at the time
18 Mr. Spellings presented it to me.

19 Q Can you tell me approximately how long before --
20 well, let's see. I believe the senatorial was
21 approved on the 15th, is that correct, 15th of
22 October?

23 MR. LUNA: Thirteenth.

24 Q Well, which was first, senatorial?

25 A Senatorial.

Q That would have been the 13th of October. Can you approximate for me if you can when you first saw the plan that was adopted by the Board on October 15, 1971, senatorial.

A Only a couple of days prior to the time, I can't give you hour and day, but it was not very--

Q That's all I want. In other words, there was approximately two days lapse between the time you saw the finalized plan and the time--

A Maybe not a complete two days. Maybe thirty-six hours.

Q Would the same thing be true of the legislative plan?

A Yes, not any longer than that as far as the legislative plan was concerned, certainly.

Q Do you recall whether or not you made any changes in the legislative plan as approved by the Board after the final draft of the plan was presented to you within thirty-six or forty-eight hours prior to approval?

A Not to my knowledge. I know that the House members up until the very -- well, as a matter of fact, I think that Speaker Wutscher probably had some amendments. I don't think he ever actually offered the amendments, or maybe he did -- I don't

1 recall. I know he had some. There were -- there
2 was a large number of House members that were
3 trying to get the House -- the plan changed right
4 up to the very last minute before we voted.

5 Q Did you in your considerations and deliberations
6 in drafting and suggestions, did you familiarize
7 yourself with the legality and the constitutionality
8 of the various plans and what the law dictates,
9 both as to the state and as to the Supreme Court
10 of the United States, or did you rely chiefly on
11 Mr. Martin, who was of course the chief legal
12 officer of this state, and on the Board?

13 A Well, I am a layman and not a lawyer.

14 Q Yes.

15 A And certainly by a process of osmosis you learn
16 some of the aspects of what constitutes constitu-
17 tionality or not, but I would say that I relied on
18 the Attorney General of Texas as chairman of the
19 Commission and as the state's chief legal officer
20 to advise me of what was and what was not constitu-
21 tional in the Attorney General's or in the state's
22 eyes.

23 Q Would it be fair to say that you -- well, are you
24 aware of the requirements of compactness and con-
25 tiguity?

1 A Yes, I am aware of them.

2 Q And you are aware of the requirements of community
3 of interest? Now I realize, as you testified be-
4 fore -- and I am not disagreeing with you -- that
5 this is a hard thing to define---

6 A Yes, sir.

7 Q ---community of interest, but you were aware that
8 this was a requirement?

9 A Yes, and the Attorney General of Texas in looking
10 at the plan that was adopted, said that in his
11 opinion, it met the requirements, all the consti-
12 tutional requirements that the federal courts had
13 laid down and that the state courts -- as you
14 remember the state courts made our House redistrict-
15 ing particularly difficult when they said any time
16 that a county line had to be crossed, that it was
17 crossed, that there had to be justification, and
18 this caused some difficult problems in the rural
19 areas.

20 Q Of course, you missed this one meeting. As you say,
21 you had a prior engagement for a speaking commit-
22 ment in San Antonio, I believe. Do you think that
23 this -- your missing this one meeting had any effect
24 whatsoever on your decision in approving or not ap-
25 proving either plan?

1 A No, I do not. I recall at the meeting that I
2 missed the only business that was taken up at
3 that meeting was to hear Mrs. Milburn testify,
4 but I could stand corrected. They may have
5 heard some other witnesses, but it was not a
6 long meeting.

7 Q This may be in the area of conjecture, but had
8 there been a plan presented at that time that
9 would have been contrary to the finalized plan
10 of either the House or the Senate, could your
11 vote have been differently at that time? Let
12 me be a little more specific. Say single mem-
13 ber districts for all metropolitan areas.

14 A Well, first of all, let me say that I have been
15 on record for single member districts since 1963,
16 and I would prefer that the -- and like to see
17 Texas apportioned into a hundred and fifty single
18 member districts and every member of the Com-
19 mission knew my views on this.

20 Q Did you then or do you now have an opinion con-
21 cerning the fact that Harris County is in single
22 member districts and other metropolitan areas in
23 Texas are not; do you think that this substantially
24 affects the rights of Dallas County, the voting
25 rights of the populace of Dallas County, Tarrant,

1 Bexar, et cetera?

2 A I feel, as the Attorney General has advised me on
3 numerous occasions, that both multi-member districts
4 at large and individual member districts meet the
5 requirements of constitutionality laid down by the
6 federal courts.

7 Q I believe that the federal courts do say, as you
8 have indicated, that the fact that you have multi-
9 member districts do not per se create an uncon-
10 stitutional situation, but there are other factors
11 that are involved.

12 A I believe a federal court had ruled on a case,
13 though, where our last redistricting bill divided
14 Harris County and let the others run at large, and
15 that bill was upheld as constitutional.

16 Q I believe that you used the words previously you
17 considered in your deliberations fairness and con-
18 stitutionality, and I think we have established by
19 this that you were resorting -- well, of course, to
20 your knowledge of the decisions of the courts, of
21 both the state and the federal courts, and also
22 the recommendations coming to you from the Attorney
23 General concerning the constitutionality, since
24 you have expressed and it has been publicized what
25 your opinion is in regard to single member districts,

1 with this predicate in mind, do you feel that the
2 plans that were adopted -- the plan relative to
3 single member districts in Harris County and multi-
4 member districts in the other metropolitan areas
5 are fair?

6 A Yes, I think they are fair, and I would like to --
7 I said I would like to see the Legislature divide --
8 in particular, the House of Representatives elected
9 by the people divide themselves into a hundred and
10 fifty districts. I think they can probably do a
11 better job than a five-man commission in twenty-
12 three days drawing a hundred and fifty individual
13 member districts. We had already divided Harris
14 County, and I was the first one to become insist-
15 ent, and I insisted, since Harris County was already
16 divided and we weren't going back to a representa-
17 tion at large in Harris County, why not go ahead
18 and make the step in Harris County and divide
19 Harris County into individual member districts,
20 which we ultimately did.

21 Q Now, you have used the word "time." Do you feel
22 that the time element that was involved in this
23 thing possibly affected the ultimate outcome of
24 the redistricting plan?

25 A I can't say that the time factor was the absolute

1 criterion that caused the Board to vote as it did
2 if you are speaking about individual member dis-
3 tricts. I think that the votes on the Board were
4 either three to two or two, two, and one. The
5 Attorney General never really positively said

6 exactly what he would do. I think that the Com-
7 mission was trying to do what they thought best
8 represented the interest of the people, at least
9 they heard -- that we heard from. We heard from
10 a lot of people. In Harris County it was not --
11 there was more support for individual member dis-
12 tricts.

13 In Bexar County and in Dallas County
14 and in Tarrant County we did not receive any real
15 enthusiasm for individual member districts if the
16 members of the Board were receiving basically the
17 same type of contacts that I was, and I am not
18 too sure, and as far as the time standpoint, I am
19 not too sure a five-man commission made up of
20 state officials are the ones to divide this state
21 into a hundred and fifty member districts from the
22 standpoint of doing it in twenty-three days. That
23 is a difficult task. I am not saying that the
24 time kept us from doing it in saying -- saying that
25 is the reason they weren't divided. I think they

1 were trying to -- the Commission tried to represent
2 what they thought the majority of the people wanted.

3 Q You feel if you had more time, you could have work-
4 ed out a more -- strike "more" -- a fairer and
5 better plan, either for the Senate or for the House?

6 A No, I couldn't testify to that. You know, it all
7 depends on which bill you like best when you are
8 talking about fairness. I mean, you know, we could
9 bring fifty House members up here, and we could put
10 six different plans on the board, and they would
11 probably -- each plan get ten votes, because people
12 look at it from that standpoint. You could get
13 citizens from Dallas, Fort Worth, Houston, and San
14 Antonio to come and look at plans, and they are
15 going to look at their particular area, and we
16 have a tendency to confine ourselves to our own
17 particular area.

18 Maybe more time would have presented a
19 fairer plan, but I feel both the House bill and
20 the Senate bill are fair plans, and I was advised
21 by the Attorney General of Texas, on whose legal
22 advice that I had to rely, that both of these plans
23 are constitutional.

24 But again let me say I would have rather
25 for the House and the Senate, the thirty-one elected

1 senators and the hundred and fifty House members
2 have done the redistricting, and I felt like the
3 federal court if -- should have let the Governor
4 of Texas or directed the Governor of Texas to call
5 a special session. That is what I would have
6 preferred.

7 Q But you feel in your own mind, then, that this is
8 as fair a plan as you could have drawn within the
9 time allotted?

10 A Yes, I do.

11 Q And you further feel in your own mind that had you
12 had more time, you could not have drawn a fairer
13 plan?

14 A Well, again, that is a speculative question. I am
15 not saying that we could not, I am not saying that
16 you couldn't improve on any bill that is drawn if
17 you just worked on it over a longer period of time.
18 Certainly I think we might have -- in the South
19 Texas area we might have worked out something
20 where we wouldn't have split that one town right
21 down main street if we had more time. I feel bad
22 about that.

23 Q Did you in any of your correspondence or your
24 working on this thing, were you ever presented a
25 plan whereby Bexar County was divided into single

member districts that you recall?

A I don't recall being presented a plan that divided Bexar County into individual member districts, but I could stand corrected on that, but I really don't -- Johnny Alanis, he did testify the day I was not there, and I don't know whether Johnny Alanis had a plan that he presented that divided -- Joe Bernal testified for individual member districts, but I don't believe Senator Bernal presented a plan that divided Bexar County into individual member districts, but like I said, I could stand corrected on that, but to my knowledge, I don't believe I ever received a plan dividing Bexar County into individual member districts, Bexar or Tarrant County, but there was a college student at Arlington right at the last presented a plan, I think maybe that divided the whole state. Am I not right in that?

Q Specifically, let me ask you this. Were you ever presented a plan that you recall by Van Archer, one of the plaintiffs in the lawsuit which I have filed, dividing Bexar County into single member districts?

A I do not know. I will---

Q You don't recall?

A No, I don't recall.

Q You don't recall General Martin ever presenting

such a thing to you or mentioning such a thing to you?

A No, but he could have mentioned it and we not remember it.

Q Could he have shown you the plan and you not remember it?

A Yes, he could have, but I just don't believe that he did present a plan to me, but he could -- you have got to understand, I suppose, that certainly every member of the Legislature that came to Austin and talked to us had a plan that -- it may have been just for his own district; some may have been state wide. I looked at a lot of maps. I just don't recall.

Q Do you recall receiving any information, correspondence, telegrams, witnesses or whatever, on behalf of Bexar County, whereby they wanted or desired multi-member districts?

A Yes.

Q In the Legislature?

A Yes, I received some correspondence to that effect and I know that I received -- several of the incumbent House members, I believe appeared before the Committee for either -- and if I am not mistaken, some citizens from San Antonio publicly testified --

1 I am not certain, but we did have a lot of people
2 contact us from Bexar County, as far as at-large
3 representation.

4 Q And of these would have been the incumbent members
5 of the Legislature?

6 A Oh, no, and citizens too.

7 Q Well, I mean you did -- I am trying to go back on
8 your testimony. That would have included incumbent
9 members.

10 A Yes, yes. I think probably, if my memory serves
11 me correctly -- and we will check the records of
12 the Committee. I think Frank Lombardino probably
13 testified representing nine of the ten, I believe
14 he said he was speaking for, in that large repre-
15 sentation.

16 Q But they were the then legislators from Bexar
17 County, is that right?

18 A That's true.

19 Q Do you recall any of the interested citizens other
20 than these that contacted you in regard to this?

21 A No, but there were people that contacted -- and if
22 I am not mistaken, I think perhaps one or both of
23 the San Antonio newspapers wrote editorials -- I
24 believe the San Antonio Express wrote an editorial
25 for at-large representation and said if the

Legislature were to be divided into a hundred and fifty districts, that the legislators themselves should do it and this Redistricting Commission should wait and let the Legislature do that itself.

Q But you do not recall any interested citizens--

A If you are wanting names and dates, I cannot. I don't.

Q It is your opinion, as I understand, you think that it would be best, then, that they have single

member districts, but based upon -- I am just trying to wrap up.

A Yes.

Q You correct me if I am wrong in my analysis. But that relying on General Martin for the legality of it and the constitutionality of it, that you do

think that the plan that you devised is as good as could have been done by the board?

A That's right, but let me again say that if I were in a position to recommend what the Legislature should do--

Q That they themselves--

A --that I would recommend that they themselves divide themselves into individual member districts.

Q Did you in your proposal of, acceptance of, and the adoption of the two plans, take into consideration

1 the facts that we have discussed, fairness, of
2 course constitutionality, compactness and contiguity,
3 common interest, community of interest into various
4 senatorial -- well, let's say senatorial districts
5 as adopted by the Board.

6 A Yes, sir, we tried to the best of our ability to
7 do that.

8 Q Mr. Barnes, I am going to hand you the Texas Senate
9 Districts As Enacted October 15, 1971. This is
10 the same memorandum from which -- that you examined
11 regarding Harris County -- and show it to you and
12 point out with particularity senatorial district
13 21 in the extreme southern and southwestern portion
14 of Texas. Now, this is the plan that was adopted
15 on October 15, I believe, 1971, setting up the
16 senatorial districts. Is this correct?

17 A Yes.

18 Q Now, with specifically senatorial district 21 in
19 mind, do you think that that meets the test of
20 contiguity and compactness?

21 A Yes, sir, I do.

22 Q Do you think it meets the test of community of
23 interest?

24 A Yes, sir, I do. I know that the argument should
25 be -- could be argued that what does people living

1 in San Antonio have an interest with Starr and
2 Zavala County, for instance, but San Antonio has
3 enough for what, two and one-half senators. The
4 same argument could be made about what do people
5 have in common with people from Mills County if
6 you went to the north or Austin County if you went
7 to the east or Jackson County if you went to the
8 south instead of going to the southwest. Texas is
9 a diverse state, and when you start trying -- and
10 when you completely adhere to the one man, one vote
11 decision, there is going to be some districts --
12 as a matter of fact, an argument could be made,
13 what does Midland County have in common with Kinney
14 County.

15 Q I know -- I will ask you this question, but you are
16 familiar with Bexar County. Well, let me ask you
17 the question.

18 A Okay.

19 Q Are you familiar with the areas of Alamo Heights
20 and Terrell Hills in San Antonio?

21 A Yes. I am not completely familiar, but yes,
22 familiar enough.

23 Q I don't mean street by street, Governor.

24 A Yes, sir. I mean if you are asking me if I know
25 they are in the 11st district, yes, I do.

1 Q Are you also familiar with the voting records
2 and -- of these districts?

3 A I know that they are conservative areas of San
4 Antonio.

5 Q And rather heavily populated by Republicans; would
6 this be correct?

7 A I really think of the people of Alamo Heights and
8 Terrell Hills as being independent voters.

9 Q Well, would it surprise you to know that the --
10 would you be surprised if I told you that they
11 have voted traditionally -- they do. I am going
12 to agree with you on their independent voter, but
13 historically, that they are heavily populated Re-
14 publican areas. This wouldn't surprise you, would
15 it?

16 A Well, I have always been gratified that I have
17 been able to carry those areas, and I have got to
18 say that the only races I have really made an in-
19 depth study have been Ben Barnes's races, but I
20 know they are independent voters, and yes, I know
21 in your city elections they vote conservative. I
22 have not really looked to see how they -- I would
23 assume that those areas have voted in state races
24 and national races, probably supported the Republi-
25 can nominee for president more than the Democratic

Q Now, if that is the race we are going to use as a criterion.

Q Well, let's be a little more specific than that.

Do you know that they have a Republican JP out

A No, I didn't know that.

Q Do you know that they have a Republican county commissioner?

A Yes, I did know that Mr. Vaughn—

Q Do you know Bob Strickland?

A That used to serve in the House?

Q Yes.

A Yes, Mr. Bob Strickland?

Q Yes.

A Yes, I do know him.

Q He is Justice of the Peace out there; he is a

Republican.

A I didn't know that. I knew him when he was a

Democrat.

Q Yes, sir. Well, that is one of the advantages

of our democratic system of government is that we

do have the right to choose our parties.

A That's true, and thank God for it.

Q Well, I am sure that view would be shared by

people from the Republican Party and independents.

1 A Well, I didn't claim he was just on our side.

2 Don't misunderstand me.

3 Q Let me ask you this. Do you know of any -- were
4 you presented with any plan whereby District 21
5 would come into the south portion of Bexar County
6 rather than looping around? This is Senator
7 Bernal's district and Senator Rothmann's district,
8 is this correct?

9 A Yes, they represent those districts now.

10 Q And of course, I am sure they were both interested
11 in the senatorial redistricting plan.

12 A As were the other twenty-nine members of the Senate.

13 Q Surely. This is what we might call subjective
14 interest, is that correct, as opposed to objective?

15 A Well, I would not be quick to place my colleagues
16 in the Senate in a complete subjective mood rather
17 than objective mood, but I would say that yes,
18 every incumbent had somewhat of a personal---

19 Q Nor would I, Governor. I certainly do not want
20 to give that impression. But let's say for instance
21 they had a more personal interest---

22 A I would say yes.

23 Q ---in the division of the districts than, say,
24 John Q. Citizen.

25 A Yes.

Q All right. Do you know of any reason, or did you see a plan whereby senatorial District 21 just simply came in from the south, which would be possibly more compact and contiguous than this?

A I think that the senatorial redistricting committee in the Senate, if I am not mistaken -- and I don't know exactly how the lines were drawn, but I think they had a plan in the regular session of the Legislature that was never adopted. I don't know whether it ever really came out of committee exactly like that, but I did see a plan which the southern part of Essex County was lumped off in with these counties.

Q Rather than making this -- I don't want to use any offensive words, but rather than going around---

A Well, let me remind you that I think the staff of the committee--

Q Now, are we talking about the senatorial committee?

A No, I am talking about the staff of this Commission. I am talking about Mr. Spellings, Mr. Hooser, General Martin, people that -- I am talking about in senatorial redistricting.

Q All right.

A They made the decision to start in the inner core of the city and come out, and this loop, as you are

1 calling it or what I said -- I don't recall exactly
2 how we described it -- that is exactly the same
3 approach that was used in Harris County also.

4 Q But of course, in Harris County it didn't go way
5 beyond county lines did it; I mean it was a horse-
6 shoe effect.

7 A No, no, and I hope that Bexar County continues to
8 grow and someday that you all won't have to go
9 outside Bexar County to be entitled to three
10 senators.

11 Q Would you have an opinion as to whether or not
12 there would be -- of course, we understand while
13 these two towns may be incorporated towns or what
14 we may call bedroom suburbs, of course the people
15 in Farrell Hills and Alamo Heights basically work
16 or have their professions, their employment and so
17 forth in the City of San Antonio, is this correct?

18 A Well, I am just going to have to--

19 Q Well, do you know of any businesses or enterprises?

20 A No. I know it's a residential area.

21 Q Do you think now in your own mind that there is a
22 community of interest between these people with the
23 voting records that we have discussed, with the
24 business enterprises and interests that they have,
25 do they have a community of interest with the people

1 visitors from Duval, Jim Noy, and Starr counties?

2 A: Well, I would say that they have as much interest
3 with the people from Duval and Jim Wells and
4 as the people in this part of the county.
5 I mean I don't see the difference between saying
6 a person lives in this part of the county has less
7 of a community of interest with these counties or
8 more of a community of interest than any other
9 citizens living in Duval County.

10 Q: Well, let me ask you this. Did you or any member
11 of your staff or the people that worked on this,
12 as far as you know, consider the voting background
13 or the community of interest or the type of work,
14 income and so forth of the people from south and
15 southwest Duval County, as opposed to those from
16 Terrill Hills and Alamo Heights—

17 A: No—

18 Q: —and this area that we have already described as
19 being very conservative, did you compare those two
20 things?

21 A: No, I don't — I mean I didn't. I can't speak for
22 other members of the commission, but I—

23 Q: But as far as you know, they didn't.

24 A: As far as I know.

25 Q: Did Mr. Spellings or Mr. Hoover?

1 A Not to my knowledge. I would think that Mr.
2 Spellings and Mr. Hooser didn't compare -- did not
3 take the economic level of the income in any of
4 these senatorial districts under consideration.

5 Q Well, I just mentioned that as one of several
6 criteria.

7 A Yes.

8 Q You will of course agree that the bottom part of
9 the county is more contiguous and compact with the
10 balance of senatorial District 21 than the north-
11 east portion; is this correct? Well, all you have
12 to do here, Governor, is to -- it is closer from
13 this point down here than it is to this point,
14 isn't it?

15 A Well, if you are saying that it is closer from
16 right here to right here than it is from right
17 here to right here, yes, I would.

18 Q All right. This is what compact means, isn't it?

19 A Well, that is part of what compact means.

20 Q Well, you tell me what compact means.

21 A Well, I tell you, compact, as far as a federal
22 court definition, I relied on the Attorney General
23 of Texas to tell me whether that was compact, if
24 that meant the Supreme Court's definition of com-
25 pact, and he said it did. As a layman I cannot--

Q I want to know your -- I want to know your definition of the word compact. Now, you know what --

MR. LUSH: We object to going into that question because it is not material what the witness's definition of compactness is. The rule we were talking about here is the United States Supreme Court definition of compactness, and the witness has testified that he relied on lawyers to interpret that for him.

MR. McMANIS: I am not sure the Supreme Court of the United States has defined that word definitively myself.

MR. EASON: Exactly. I don't think it has been defined.

MR. McMANIS: It is a meaningless word generally, really.

MR. EASON: Well, is there anything objectionable to the witness answering? Now, he has used his best judgment in this, relied on the Attorney General for the law. I think that the word compact is not necessarily a legal word, but a factual word. I would like to know in his best judgment, whether or not this area is more compact -- or whether it isn't, and if not, what his definition of compact is.

1 MR. McDANIEL: You are asking him, then,
2 I take it, in accord with your question, the com-
3 pactness of the district in terms of the ordinary
4 meaning of the word, then, completely aside from
5 any legal implications that the word compact might
6 have in the context the Supreme Court uses it, is
7 that correct?

8 Q (By Mr. Eason) My question is what does the word
9 compact mean to him, that simple, and I know of no
10 -- Mr. Barnes is a learned, intelligent man.

11 A I am not trying to evade your question, counsel.
12 I am just trying to determine in my mind what com-
13 pact does mean to me.

14 Q Well, that is the question.

15 MR. CURRY: In relationship to what?

16 MR. EASON: Just the word compact. I
17 started with the other end. We didn't get an
18 answer to that. Now I want to know what compact
19 means.

20 A Well, in relation to this bill, it means putting
21 geographic areas of Texas that are in the geographic
22 areas of the state as close together as possible
23 in senatorial districts.

24 Q Question: To use a figure -- this isn't accurate,
25 but a hundred thousand, a hundred and ten thousand

1 on whatever portion of Bexar County was taken from
2 the north part of the county plus the northeast
3 part of the city, could this area, whether this
4 wanted out -- I realize that any time you take it
5 from one area, you have got to put it in another,
6 you have to make this thing come out by population.

7 A That's right.

8 Q And I realize the burdens that you have. Question:
9 on is whether or not this senatorial district, disregarding
10 all others, would have been more compact, had
11 you gone straight north from the biggest portion
12 of the district into Bexar County, rather than
13 looping around and coming in from this side.

14 A Well, I think this right here, these people are
15 closer to Maverick County than these people over
16 here would be if you are talking about -- I mean
17 what point in the district are you going to pick
18 out?

19 Q I will ask you to put your pen where the approxi-
20 mate geographic center of the district is.

21 A I will be happy to do this and let the record
22 reflect this is just a matter of judgment on my
23 part. I would say that it is probably---

24 Q Somewhere around---

25 A --around Dimmitt or LaFalle right in there.

1 Q LaSalle. All right. That is close enough, is it?
2 I want your answer, but are we agreeing on this.
3 It would be somewhere around Dimmitt or LaSalle,
4 correct?

5 A Yes.

6 Q All right. Had it gone into the southern portion
7 of Bexar County from the central geographic por-
8 tion of the senatorial district, would it have
9 been more compact than it is as drawn? Now, dis-
10 regarding all these other things, just using the
11 word compact. This isn't the sole criterion?

12 A Well, yes, but also I think in my definition of
13 compact, to do it that way, then the 28th and 19th
14 districts might not have been as compact then.

15 Q 26th?

16 A I mean -- okay -- 26th.

17 MR. McDANIEL: Off the record for just
18 a second.

19 (Discussion off the record)

20 A But, counsel, if you are asking me if we took and
21 tried to determine the geographic center of every
22 district and tried to measure and make certain
23 that any division of any urban area, we took part
24 of the urban area that would be closest to the
25 geographic center of the district, we did not nor

1 did the Attorney General direct us that we had to
2 do that to meet his criterion and his definition
3 of compactness.

4 Q All right. I won't disagree with that. My point
5 is, though, was there any particular reason in
6 your mind why you did not make it more compact,
7 which you stated that it would have been, had you
8 come straight into 15, why then did you loop
9 around 15 and 16, was it to preserve -- I believe
10 we have used the word subjective interests of the
11 incumbent senators?

12 A No.

13 Q Well, state if you know, why it was drawn around
14 the two present ones and looped the city.

15 A Well, I can't tell you why that that line was drawn
16 exactly like that, because I didn't draw that line,
17 but as in Harris County, they start from the core
18 of the city and work out, and this was the criterion
19 that the staff told us they used in drawing these
20 lines.

21 Q Well, now, I believe that we have agreed that this
22 isn't the most compact that you could have made.

23 A Well, but I have not agreed that there is a great
24 degree of difference between compactness of -- of
25 how you are suggesting the lines be drawn and how

they are drawn.

Q Well, no, a few miles possibly.

A I mean you are talking about -- you are only talking about a matter of a very few miles.

Q Yes, sir.

A Or a matter of blocks, maybe.

Q No. I believe from the southern portion to the northern portion of Bexar County would be quite a few miles, wouldn't you?

A Well, that's true, but I think your---

Q Well, this is just one criterion. I will pass that on. Now, did you put any study into the community of interest between the people of northeastern Bexar County and the balance of senatorial District 21, as compared to the community of interest of the people of the bottom part of senatorial District 19 and the balance of 21?

A Well, I must say that I think probably what -- we looked at Bexar County as all the citizens of Bexar County having primarily the same community of interest and having community of interest with South Texas. I did not feel like or did anyone ever discuss that we had to go into Bexar County and try to pick out precincts where the people had more of a community of interest or less of a

community of interest with citizens in South Texas -- in these counties here. I assume that all Bexar Counties consider themselves as South Texans, as much I mean, and when I think of Bexar County, while I know that there is diversification in that county, when I think of Bexar County as a state wide official, I think of a county that has primarily the same community of interest. We are talking about education, we are talking about water, talking about roads, the problems that the state deals with and the state Legislature deals with. I have had the feeling in trying to be a representative state official that Bexar Countians had primarily the same community of interest.

Q All right. This is your personal recollection of Bexar County.

A Yes.

Q But did you give any thought or any consideration to whether or not there was a greater community of interest between the lower part of the county which is more compact than that of the northeastern portion of the county?

A No, I have not to say that I did not give a great deal of thought that the people in the -- in one part of the county would have a greater community

1 of interest with these counties than people in
2 another part of the county.

3 Q Did you give any thought to it?

4 A Well, that is a difficult decision to answer. I
5 know that I asked the Attorney General not one
6 time but many times about the bill and making
7 certain that as far as compactness and community
8 of interest and the other guidelines, although
9 they have not been defined as well as I would like
10 to see them defined by the Supreme Court, that we
11 were meeting the requirements to the best of the
12 Attorney General and his staff's knowledge, and I
13 was told time and time again that we were.

14 Q Would you say, then, would it be fair for you to
15 say that you based your judgment that you had on
16 the approval of senatorial districts 19, 26, and
17 21 on the fact that the Attorney General told you
18 that they met the constitutional legal test?

19 A Well, I had no other alternative as a state official
20 but to rely on the Attorney General's judgment as
21 far as constitutionality of these bills. Certainly
22 I had some judgment, but as I pointed out earlier,
23 it is that of purely a layman's judgment.

24 Q Did you rely on him on any of the factual data
25 that might have been considered in these matters?

1 A: I am sure that the Attorney General's staff con-
2 tributed factual data when working with the staff.

3 If you are asking me if I specifically requested
4 any factual data as far as the facts are concerned
5 with getting the census tract, the Legislative
6 Council supplied all that.

7 Q: Did you consider all this or did you delegate---

8 A: I am not sure I can answer that.

9 Q: But we draw that word back. I believe it is ob-
10 jectable to the Attorney General.

11 A: Yes, I am not sure I can answer that.

12 Q: Did you rely on the judgment of Mr. Spellings and
13 Mr. Hester?

14 A: To get all the facts necessary to draw this bill?

15 Q: Yes.

16 A: I relied on Mr. Spellings, Mr. Hester, Mr. Johnson
17 and the Legislative Council. That is the purpose
18 of having the Legislative Council, is to have a

19 research arm of the Legislature to get to the
20 legislative branch of the government, which I am a

21 member of that branch, the facts that they need to
22 be able to make intelligent legislative decisions,

23 and I relied on the Legislative Council in this

24 matter, as I have in many other legislative matters.

25 Q: And I presume that you feel at this time that

1 districts, senatorial districts 19, 26 and 21 are
2 as good fairly, constitutionally, from an ethnic,
3 political, racial, community of interest, meeting
4 a test of contiguity and compactness, satisfy you
5 in your own mind as being a proper set of three
6 senatorial districts to fairly represent all the
7 people that I have stated in the groups?

8 A Yes, I do. Now, I am not saying that if maybe
9 with a lot of work, that somebody else could not
10 come up with a better plan, but I think it meets
11 the constitutional requirements, and in my opinion
12 it is a fair plan.

13 Q This is the reason that I asked you earlier whether
14 or not you feel or felt -- feel that the time ele-
15 ment that was involved -- and I know that you did
16 have a plethora of evidence, telegrams, witnesses,
17 people that had an interest either subjective or
18 objective in these matters, that whether or not
19 the time element could have affected the ultimate
20 outcome of the two plans.

21 A Well, if I were to tell you that I think positively
22 the time element didn't have any effect, that would
23 be wrong because yes, the time element did have
24 some effect. It has been my experience after
25 eleven years in the Legislature that every time

1 reapportionment comes about, it always comes about
2 as a crisis basis because it is such a difficult
3 issue. I know of no other issue that is more dif-
4 ficult that state government has had to do in the
5 past twenty years than reapportionment.

6 Q. And you are a good Democrat and eleven years---

7 A. Yes.

8 Q. ---in the public service, certainly realize and
9 recognize the interest of the various voters from
10 not only your constituency when you were in the
11 Legislature, but the State of Texas are most vital
12 to our form of government, aren't they, whether
13 racial, ethnic, political, or whatever?

14 A. Well, yes, they are.

15 Q. And you did, with all these thoughts in mind, feel
16 that this was the best that you could come up
17 with and feel that it is fair and treat all people
18 fairly?

19 A. Yes, I do.

20 MR. HATCH: I believe that's all.

21 Questions by Mr. Richards:

22 Q. Governor Barnes, I will try not to be repetitions,
23 but there will be some undoubted repetition, but I
24 am going to try to turn my attention essentially to

1 House reapportionment and to essentially the
2 questions of multi-member districts in the urban
3 counties. I take it from your testimony earlier
4 that you confirmed today that your philosophical
5 view, at least, is that individual member districts
6 for the Texas House are preferable?

7 A That's right.

8 Q And that was your view, I take it, during the
9 course of deliberations on---

10 A It has been my view since 1963 since Congressman
11 Eckhardt and I sponsored a resolution to that
12 effect.

13 Q At the time of the reapportionment in 1965?

14 A Yes.

15 Q All right, sir. Will you tell me in terms of
16 how you saw it the Redistricting Board went about
17 gathering the evidence that it relied upon and you
18 relied upon in formulating the House plan as it
19 was approved.

20 A Well, of course, we had the bill that the court
21 had declared unconstitutional, and of course we
22 had the Supreme Court decision that any division
23 or crossing of a county line had to be justified.
24 They struck down, the Texas Supreme Court did, the
25 House bill. That was one of the points they spoke

1 to is their decision. And I think probably we
2 started drawing the bill with trying to meet the
3 Texas Supreme Court's guidelines for constitu-
4 tionalality first, and of course we were -- the
5 Attorney General's office continually made us
6 aware of what they thought the federal courts had
7 said. if you are specifically speaking to the
8 individual member districts in urban areas. The
9 Attorney General on numerous occasions said he
10 thought that either multi-member or individual
11 member districts were constitutional, and about
12 the specific point, if you could do Harris County
13 one way and do Dallas and Bexar and Tarrant
14 another, he said yes, he felt like it would be
15 constitutional because we had in 1966 done exactly
16 basically the same thing. I mean we divided --
17 and I think since we were going to have to draw
18 some lines in Harris County and congressional
19 lines were not going to work because you were
20 going to have to be taking in some other counties
21 and it would not work because Harris County came
22 out with exactly what was it, three congressmen,
23 and so it worked out perfectly, but we were going
24 to have to draw some new political boundaries.
25 Well, since we were going to have to draw some new

political boundaries, I felt strong about going ahead and getting individual member districts established in Harris County, and I think this was upon my direction that the individual member districts were drawn in Harris County. Now, I have spoken--

Q All right. Okay. Fine. Go ahead.

A I have spoken to the point about the people that we heard from in Bexar County and Tarrant County and Dallas County and about what I thought the Commission would have done in a showdown vote and about the fact that I felt it was best for -- it wasn't going to be only in those counties -- I have forgotten exactly how many areas there are, but there was a lot of division to be done like in Travis County, I think, and Nueces County.

Q All right. But let's see. Of course you had hearings you attended.

A Yes.

Q At which witnesses appeared and offered evidence in terms of the preferences of the citizens of various counties, is that correct?

A That's true.

Q I take it you took into account what you heard from--

A Yes, certainly, at the hearings and in communications

1 that we had from interested citizens.

2 Q. So you relied upon both what you heard in the
3 hearings and what you received through other
4 sources?

5 A. What we received through other sources.

6 Q. Now, what—

7 A. Let me -- while they should not be the ones, the
8 only ones we listened to, the elected legislators
9 from Tarrant County overwhelmingly favored individual
10 number districts. Elected legislators from Bexar,

11 and Tarrant, and Dallas overwhelmingly favored at-
12 large representation.

13 Q. Actually, I guess there were three divisions among
14 the Dallas County legislators, were there not,
15 some favored individual number districts, some
16 proposed the possibility of carving Dallas County
17 into six or three-two districts, and others who
18 favored at-large districts.

19 A. Well, yes.

20 Q. Is that correct?

21 A. Yes. Now, I was opposed to -- at first I thought
22 about trying to go along with senatorial district
23 lines. They had already been approved. You got
24 into all kinds of trouble with that because of --
25 in Tarrant County it worked fine because you had

two senatorial districts and you had to cross county lines to get some surplus in the other. In Dallas County it didn't work. It was obvious from other political boundaries that it would have to be drawn.

Q Were efforts made at all that you were aware of to try to draw districts in Dallas County of less than county wide by you or your staff?

A Robert Spellings and Greg Hooser tried to see if it could be worked out to draw House districts along senatorial district lines.

Q Did they actually come up with a plan, a map that showed the drawing of such districts?

A I don't know whether they completed a map or not, but they ran into a lot of difficulty and came back -- and have you all taken Spellings's deposition yet; have you taken his deposition? He can speak to this more about what specifically caused a problem. They came back and recommended we were going to something less than individual member districts, that you draw complete new boundaries and not try to rely on congressional lines or senatorial lines, because it was just too complicated.

Q So the staff recommendation of Spellings and Hooser were if you were going to carve Dallas County that

you go to individual member districts.

A Well, yes, or you would have to go and draw some new political lines just for House of Representatives, see.

Q Was this recommendation made only to you, do you know whether it was made to Barnes -- I mean was this report made only to you or was it also made to Attorney General Martin, do you know?

A You will have to ask them. I really don't know.

Q You don't know.

A But it was my -- I said -- as a matter of fact, I was quoted in the press as saying, suggesting a senatorial district approach, and they came there, so I doubt if they did, but I don't know.

Q Well, I guess the thing that puzzles me is that you, I take it, are expressing here today a continued preference for single member districts---

A Yes.

Q ---in a county at least as large as Dallas, is that correct?

A I really would prefer and as for, if I had the right to do it Ben Barnes's way, I am for individual member districts all over the state. I am for one hundred and fifty individual member districts.

Q Do you make any distinction in your mind in

1 expressing this preference between a county of the
2 size of Dallas, a million-three, and a county the
3 size of Travis, I suppose closer to three hundred
4 thousand, do you think it is even more preferable
5 in Dallas County than in Travis County?

6 A Well, I think the larger the county is, the more
7 preferable it is.

8 Q And the reasons, I assume, are partly just capacity
9 to relate to the voter?

10 A Well, the capacity to relate to the voters, the
11 cost of running for office. I just, as I have
12 said on numerous times, I have always felt like
13 that it was not the best representation when I
14 was seated in the Texas House representing sixty
15 thousand persons and the man representing Harris
16 County seated next to me, was representing a
17 million people.

18 Q You saw in that some inequity, is that it?

19 A Yes.

20 Q I assume -- let me ask you. Does your office or
21 your staff maintain a diary of telephone calls so
22 -- log of telephone calls that would reflect the
23 calls that you received on this question, say, from
24 Dallas County?

25 A No, they really don't. I mean when someone leaves

add to word—received separately and questions

Q All right. Now would you go on and have more

A When it is a leave word, it is reflected, but

if the call comes in and I talk on a call, there is never any record made of it.

Q The leave word call, you have one of those carbon things that keeps—

A It's not a carbon. It's just a spiral notebook, not like that one, like the one that she has got there.

Q And all the calls are recorded on that that you will be supposed to pick up, whether you pick them up

A Yes, and I understand that for instance San Holmes called from Dallas, and I never got the call, so it is a good example. It is impossible, it is obviously impossible for me to return all the calls.

That is one man I know that called me because he was upset with me at first because he didn't think I got his call. I mean he didn't think I returned his call, and I really didn't get it.

Q All right. Did you keep or have you maintained a file of correspondence, written communications relating to the redistricting issue?

A We didn't — I was asked this about the congressional

1 suit. My correspondence is filed under alphabetical
2 order. We have a master file. I didn't find out
3 until the congressional redistricting. We have got
4 fifteen three-drawer cabinets full of correspondence
5 and it is filed not under subject matter, but it is
6 filed by the name of the person who writes the cor-
7 respondence.

8 Q All right.

9 A But if somebody, I am sure,-- I don't know whether
10 Commissioner Armstrong or General Martin or someone
11 -- if someone certainly -- I probably had more
12 people contact -- well, I don't know. Attorney
13 General Martin may have had more people contact
14 him because he was chairman, but a lot of my cor-
15 respondence was directed to all five of us, copies
16 were sent to all five of us.

17 Q Right. There will be duplications.

18 A I mean there will be duplications of it.

19 Q I guess, I am trying to understand exactly how it
20 was that you reached the determination that the
21 majority of the persons in Dallas County favored
22 the at-large system.

23 A Now, I--

24 Q If you did make that determination.

25 A I say this. The majority of the people that

1 contacted me---

2 Q All right.

3 A ---now, please -- I do want to make that---

4 Q Okay.

5 A I am not too sure the man on the street really
6 understands what we are debating here, at large.

7 I think if you asked a man, would you like to have
8 one man represent you, living down the street rep-
9 resent you, or whether you would like to have ten
10 men living some other place. I think probably the
11 majority of the people would say, I want that one
12 man, but---

13 Q You were really saying the majority of people who
14 contacted you by letter or by phone from Dallas
15 County were expressing preference for at-large---

16 A Yes, and from Tarrant County and from Bexar County
17 by an overwhelming -- I would say, oh, four or five
18 to one.

19 Q Have you gone back to look at -- have you gone back
20 or can you even reasonably go back to your cor-
21 respondence to determine really the ratio --
22 obviously you received letters favorable, favoring
23 individual member districts.

24 A Yes, I think that would be a good question to ask
25 Robert Spellings. I am not trying to avoid it, but

1 I mean he is really in a position to tell you more
2 than I am.

3 Q What precisely is Mr. Spellings's relationship to
4 you in terms of title?

5 A Well, he is the Executive Administrative Assistant
6 in the Lieutenant Governor's office.

7 Q I mean in lines of responsibility, he is the person
8 that answers directly to you, I suppose?

9 A Yes, he answers directly to me, right.

10 Q Now, we have been told that Mr. Spellings has
11 played a principal role in both determination of
12 the House and senatorial district lines. Is that
13 accurate, as you understand it, in the drawing of
14 the lines?

15 A Well, yes, I would say -- I said this earlier. It
16 is repetitious. I would say Mr. Spellings and Mr.
17 Hooser and the Assistant Attorney Generals -- and
18 I know Armstrong worked with them some. I don't
19 know how much Mr. Calvert actually came over and
20 spent any time looking at the maps, and of course,
21 Speaker Nutscher in the House redistricting -- let
22 me say this. Now, you have got to understand that
23 Speaker Nutscher had an alternate plan, he didn't
24 vote for this plan and was very much opposed to it,
25 and so stated at the period when we voted, so he

1 didn't work on this.

2 Q Yes. I understand Speaker Mutscher was preparing
3 his own plan throughout this period of time, is
4 that correct?

5 A Yes.

6 Q I take it from what Attorney General Martin has
7 told us that there were no formal meetings of the
8 Commission other than those that were public, is
9 that correct?

10 A That's right. That's absolutely right.

11 Q Now, you have told us, as he has, that Attorney
12 General Martin really never expressed a preference
13 one way or the other with respect to whether you
14 carved Dallas County, for example, into individual
15 member districts or left them running at large, is
16 that correct?

17 A Well, in the informal discussions with the Attorney
18 General and with Commissioner Armstrong, if you
19 are asking me, I thought the vote was two, two, and
20 one and probably--

21 Q By two, two, and one, what do you mean by that?

22 A I would have thought that Commissioner Armstrong
23 and I would have voted for defining the State of
24 Texas into a hundred and fifty member districts.

25 I thought both Mr. Calvert and Speaker Mutscher

expressed themselves publicly as being opposed to this, and the Attorney General never did, I don't think -- he may have. I am not certain of this -- that he ever came out publicly and said what he thought, but I thought it a -- because of -- not because of his individual preference, but I always felt like because of the support for at-large representation in Dallas and Tarrant and Bexar counties, that the vote was three to two against individual member districts.

Q But I gather from what we have been told to date that issue never was really faced directly.

A Well, it was faced. If you are asking me if I said, "All right, Crawford, we are going to vote---"

Q No, I am asking you if ever a time came when that issue was squarely presented by you or anyone else, to your knowledge, to Attorney General Martin as to whether he preferred individual or county wide districting in Dallas County.

A I don't know that we ever talked about Dallas County. We talked about -- when I made the recommendation that we divide Harris County into individual member districts--

Q What occasion was this?

A This was early in the -- at the---

1 Q Was this a formal hearing---

2 A No, it was---

3 Q A caucus or---

4 A It was at the conclusion of one of the public
5 hearings. As a matter of fact, I think I had
6 already said it in the press and they had already
7 read it, about that. There was only Speaker
8 Mutcher objected to that at that time.

9 Q All right.

10 A But we never did talk about whether we were going
11 to do Dallas County when we were talking about it,
12 or at least they may have talked about it, but I
13 don't remember any conversations. We talked about
14 the rest of the state.

15 Q You don't recall ever talking about Dallas as a
16 separate matter?

17 A Well, I am not going to say that for sure, but I
18 recommended senatorial districts for the large
19 urban counties and maybe we -- no, I don't remember
20 whether we talked about Dallas County specifically.

21 Q Well, is it fair then to say that at least the
22 issue, as far as Dallas County was concerned, was
23 never faced directly and debated, as far as you
24 know, between the members of the Commission as to
25 whether to carve it into single member districts?

1 A Now, are you talking about at a public hearing, it
2 was never---

3 Q At public or private.

4 A And I can't speak to -- I can't speak to what
5 conversations Attorney General Martin had over the
6 phone with any other people.

7 Q No. Talking about when you participated.

8 A When I participated, now, I had phone calls, now,
9 from Dallas County saying don't divide Dallas
10 County up, and phone calls that said divide them
11 up.

12 Q I am talking about when -- we are out here trying
13 to understand as best we can how it came to pass
14 now, a bill has been adopted that leaves Dallas
15 County running at large, and trying to see when
16 that decision was made---

17 A When that decision was made---

18 Q ---how it was reached and when it was made, if you
19 can give us any guidance on it.

20 A Well, I can't give you guidance specifically as
21 far as Dallas County is concerned. I can give you
22 guidance as far as what the rest of the areas that
23 could be divided into multi-member districts was
24 made sometime during the -- oh, I would say the
25 last week of the drawing of the bill. I am not---

Q And how did it come about, that decision?

A It came about by just an assumption that if we had a public hearing and a vote, that the vote would probably be three to two against it.

Q That was your assumption?

A Well, if you are asking me what I thought, whether I thought that it would get individual member districts for us to have a meeting and vote on whether we were going to divide individual member districts, no, I would have thought the vote would be three to two against it.

Q But the point -- I guess I am clear -- that never came to pass.

A That never came to pass as far as a formal vote in the record, no.

Q Or for that matter, did it ever come to pass if we assume, as you have, that Mr. Armstrong, who has already testified that he was unequivocally in favor of single member districts, Speaker Matscher opposed, and Mr. Calvert perhaps not strongly either way, but you have assumed, as I understand, that Attorney General Martin was essentially the swing vote, two, two, one and two, three on the issue, is that correct?

A Yes.

1 Q As I understand your testimony, and frankly, as I
2 understand his, the issue never was really drawn
3 between you as to how he would vote if confronted
4 with a vote on the question?

5 A Well, let me make, at least as far as what my
6 thinking was---

7 Q First, was it ever drawn, did you ever really say
8 to him, "Attorney General Martin, we now have to
9 look at the rest of the state.?"

10 A Crawford and I just---

11 Q What is your---

12 A We talked about the fact -- and I made this state-
13 ment to Crawford and made it publicly that I would
14 -- of course, I was disappointed that the Legisla-
15 ture wasn't drawing these lines to start with, and
16 to divide the state into individual member districts,
17 as far as this Commission was concerned, I was con-
18 cerned about us having to do it in what did we
19 have, only about seven or eight days left at the
20 time we were talking about this of the twenty-three
21 days, and while time was not the sole criterion,
22 it certainly figured into it, but I did not just
23 say, "Okay, Crawford. I am going to clear myself
24 a spot here. I am going to pitch a fit. We are
25 going to just look up and we are going to do it,"

1 because the support that we were receiving for the
2 individual member districts from over the state
3 was not as strong as the support that we were re-
4 ceiving to leave at-large representation in those
5 counties, and I think the Commission in good con-
6 science and Bob Armstrong and myself found ourselves
7 in the position where that we were trying in good
8 faith to -- at least to get the job done and to
9 get a constitutional bill drawn.

10 Q I understand that, and I just come back to see if
11 I can be -- I think I have the answer, but I want
12 to be certain, that as far as you recall, then,
13 the question never came to any formal decision,
14 that is, a question of how Attorney General Martin
15 would vote if faced with the question---

16 A Well, the---

17 Q ---on whether or not to carve the state into
18 individual member districts?

19 A Well, it did not come to a formal vote, but I think
20 that you have been in discussion with people on
21 numerous times after you discussed a matter at
22 length, that you were able to reach a conclusion
23 without having a show of hands.

24 Q Right. It was your intuitive judgment that he was
25 opposed to single member districts, is that correct?

1 A Well, not that he was opposed to it, but that he
2 was opposed to us attempting to do it in the time
3 that was left, and that there was going to be real
4 difficulty in trying to bring this about, and I
5 have got to say this right here. I mean let me
6 hasten to add to say that it wasn't only the Attorney
7 General that I think -- I thought the best inter-
8 est of the people, if it was constitutional, and
9 the Attorney General assured me time and time again
10 that it was constitutional, that the best interest
11 might be served for us to go ahead and get this
12 bill approved and let the Legislature come back
13 hopefully in 1973 and draw individual member dis-
14 tricts, which I have said that if I was in a posi-
15 tion to recommend, I would recommend, but that
16 would be waters down the line, but I didn't dead-
17 lock the Commission or try every day to bring about
18 individual member districts. I want to make that
19 clear.

20 Q I want to know what effort, if any, you made to
21 bring about individual member districts in Dallas.

22 A I talked to the Attorney General about it when we
23 first were assigned this task when the Commission --
24 about the fact that I hoped that it worked out for
25 us to be able to draw a hundred and fifty individual

of other districts.

Q No discussion, though, of Dallas County independently of the other urban counties?

A Dave, I don't really say, but I'll say this.

Q That's all right.

A I really don't know if someone said, "Let's just do Dallas and then let's leave Fort Worth and Samar County like they are, but let's do Dallas." I really don't remember.

Q So as far as you now recall, you have no recollection of ever isolating Dallas County, discussing whether it's feasible to do Dallas as a large metropolitan area but leave the others intact?

A No, but now I know there was a discussion between me and the staff and -- when I was trying to work out something along senatorial district lines, because from a philosophical, not from a constitutional standpoint, from a philosophical standpoint, it concerned me with that many people being elected at-large.

Q Dallas County?

A Yes, Collin and Tarrant and Tarrant also.

Q Let me be clear about the kind of questions I'm asking you. I am not asking you to pass your judgment on the constitutionality of the legislation

1 which you enacted. I am concerned about your
2 opinion and your preference.

3 A Yes.

4 Q You expressed on a question a moment ago that it
5 was your preference that if necessary, the federal
6 court direct the Legislature to come back in
7 special session and draft a single member district
8 plan. Is that still your preference?

9 A Yes, it is. If this bill is unconstitutional, I
10 certainly think the Legislature ought to be convened
11 back in session to attempt to draw a constitutional
12 plan, and I feel like -- I am not going to editorial-
13 ise. I will shut up.

14 Q I take it you were aware of the view -- what were
15 you going to editorialise about? I am sorry. What
16 did you start to say? I didn't want to cut you off.

17 MR. McDANIEL: You couldn't resist, could
18 you?

19 A My counsel are just having -- they are having
20 apoplexy over me talking so much.

21 Q All right. You think you are getting vibrations
22 from your---

23 A But I feel like that even though the Legislature
24 refused to -- had failed to do the redistricting
25 in a special session if the Governor said even

though they didn't do it in a special session, I am going to call them back, even though the Constitution provides that the Commission should do it, if the Legislature had been called back and they had drawn two bills, I think the federal court would have upheld those legislative acts as constitutional if the bills had been good bills.

MR. McDANIEL: Understand we don't know whether the state Supreme Court would have or not.

Q I was going to ask you what your view, if you had a view, as whether or not the fact that we are stuck with this redistricting plan for the next ten years.

A Well, now, that -- no, we are not stuck with it for the next ten years. The Legislature can re-open it itself any time it wants.

Q That's your view of the Constitution?

A Yes. Well, if that is not true, then the bills that we passed in 1967 and '68, because a precinct line or two was changed -- wasn't it Haury? No, it was Elia Harris and McNeal that swapped two precinct lines in '68 when the Legislature met. Isn't that right, Mr. Luna? There are mini-redistricting -- mini, w-i-a-i redistricting bills passed nearly every session changing something, so

1 I think---

2 Q A bill to get Mike's house in his district, though?

3 A That's right.

4 Q I assume you were aware---

5 MR. McDANIEL: Understand the Attorney
6 General's office is expressing no opinion about the
7 legality of these particular plans.

8 MR. RICHARDS: Okay. Good. I have that
9 of record. You really aren't?

10 MR. McDANIEL: No.

11 MR. RICHARDS: You think the jury is
12 still out on these.

13 MR. McDANIEL: We have not been called
14 to pass upon what the state law is on this, so far
15 as I know. We may have down here in our files
16 some opinion that is fifty years old that passes
17 on it, but I don't know about it if we do.

18 Q You have some familiarity with the -- I suppose --
19 the population makeup of Dallas County, the con-
20 centration of blacks and citizens in south Dallas
21 and south Oak Cliff. Are you generally familiar
22 with them?

23 A Yes.

24 Q The view has been expressed by newspaper people,
25 at least, and others that carving Dallas County

into individual member districts would in all likelihood increase the number of black legislators of Dallas County. Do you have any opinion on that as to whether it would tend to increase the number of black legislators in Dallas County?

A I really don't know. I would think that it might, but of course, how many -- let me ask you this.

In the past -- and I am not trying to ask a question I know the answer to -- how many black legislators have run and been defeated from Dallas County?

Q There has never been more than, as I understand, one black legislator.

MR. CUMMINGS: No.

MR. RICHARDS: That run and been defeated.

My information -- and maybe we will have to verify this -- there never was a black legislator candidate after Reconstruction until Mr. Bedford who ran in the early 20's and was defeated and thereafter--

A No. My question is, is there--

Q I am sorry.

A --proved that at-large representation discriminates against a black's chances of getting elected?

Q Oh, that is not the question I am asking you. I am just saying--

MR. McDANIEL: That is the question we are

supposed to be deciding in the court case.

Q Yes, I guess that is right, and of course, it is our legal contention that it does. My question simply is as a political person, whether you felt, taking into account the size of the black population in Dallas County, the relative concentration of it in certain areas of Dallas County, whether the carving of Dallas County into individual member districts would tend to produce more than one black legislator out of the eighteen that are -- fifteen that are presently serving?

A I think that's possibly true, but I am not -- I can't just say it with any degree of certainty.

Q Is this a matter that you took into consideration one way or the other in attempting to evaluate the desirability of single member districts versus multi-member?

A This is one of the things that goes into my judgment as far as individual member districts are concerned. I mean it's not---

Q You mean part of your expressed preference for individual member districts is based upon the assumption that it would produce in urban areas, I suppose.

A I think there would be more -- for instance, maybe

1 more Republicans, but of course Dallas County has --
2 the at-large representation, they have been able
3 to -- in Dallas County they sweep that county and
4 Republicans be elected --

5 Q One time?

6 A Yes -- about, yes, one time.

7 Q The question was asked me, and I want to be sure

8 I understood you. Sometimes lawyers think they
9 have an answer to a question and they don't. As

10 I understood what you have really said, it was

11 that part of the basis for your philosophical
12 preference for individual member districts, par-
13 ticularly in urban counties, is that it would tend
14 to result in the election of minority -- whether

15 it is racial minority or other political minority --
16 viewpoints, have there --

17 A Well, let me say I have no evidence. I answered
18 that question -- that was a philosophical thought

19 on my part.

20 Q I accurately stated the philosophical basis.

21 A Yes.

22 Q So far as you know, were there any factors, histori-
23 cal factors that governed the -- for example, that
24 governed the decision not to cut Dallas County
25 into single --

1 A Excuse me?

2 Q Were there factors such as historical factors that
3 motivated the decision of the Board not to carve
4 Dallas County into single member districts or
5 something less than at large?

6 MR. CURRY: That is a very broad question
7 on what is historical.

8 A If you are asking me, Dallas County has by and
9 large, I think, because you have seen us -- a
10 Democratic ticket elected recently in that county.
11 I think Dallas County has had effective representa-
12 tion, and I don't think the at-large representation
13 has taken away from the effectiveness of that
14 delegation, and I find that in Dallas County, Dave
15 -- and again, this is pure speculation and just
16 philosophy on my part, but Dallas County has -- as
17 far as the political leadership of that county, has
18 been proud of the representation in most instances.
19 I am not saying everybody is a hundred per cent
20 satisfied, but the at-large representation has
21 been considered by many in Dallas as an asset to
22 that county.

23 Now, let me say this again, and I have
24 not hesitated to disagree with those people who
25 feel that way about individual member districts;

that doesn't change my--

Q Well, of course I guess you are aware, are you not, that the people who normally get their legislative candidates, the House members, elected -- for example, the Democratic Committee for Responsible Government is not that happy with the senatorial representation, is it? Have you ever encountered in that connection some feeling that they weren't that happy that they had Senators McNeil and Maury and Harris down here, although they were perfectly happy with their House delegation?

A Oh, I don't know that that is -- most of my friends in Dallas County are -- there is degree of happiness, Dave.

Q I take it from everything that you have said to us that nothing took place during the hearings of the Legislative Redistricting Board or the private contacts that you might have had either orally or in writing during -- to alter your opinion that single member districts are still preferable.

A Well, now --

Q Your opinion.

A As far as my opinion.

Q That's all.

A Okay. You have just asked me my opinion. Okay.

1 That's right.

2 Q Your opinion was and is and remained throughout
3 that single member districts for the lower house
4 were preferable?

5 A Right, and I would like to see the Texas House of
6 Representatives divide itself into a hundred and
7 fifty individual member districts.

8 Q Or the federal court to do it for them?

9 A Well, I would prefer the Texas House of Representa-
10 tives, not that that is going to be of any impor-
11 tance to the federal judges, but---

12 MR. RICHARDS: That's all.

Questions by Mr. Idar:

Q Mr. Barnes, it is my turn at bat.

A All right. Fine.

Q My name is Ed Idar, I-d-a-r, Jr., and I represent a group of intervenors in the entitled lawsuit, the Rejoinder case, headed by Senator Joe Bernal. We represent, you might say, the Mexican-American intervenors in this issue, at least we represent the Mexican-Americans as a statewide class and specific classes in certain counties like Dallas, Bexar, Hidalgo and El Paso.

Q I would like to get some kind of frame by way of time as to sequence of events here. I would like to satisfy myself. To begin with, it is my understanding that at the time the Texas Supreme Court ruled on your House redistricting plan that was enacted by the regular session or special session, whichever one, the Legislative Redistricting Board was already in being for purposes of redistricting the Senate?

A That's true.

Q And you had roughly twenty-three days' notice, approximately, from the time of that court decision to the deadline when you would go out -- when the life of the Commission would expire?

1 A That's true.

2 Q Do you recall when the constitutional amendment was
3 enacted that provided or created this Legislative
4 Redistricting Board; was that sometime in the late
5 forties?

6 A Yes, I think that's correct. I am not sure of the
7 date, though.

8 Q Now, the reason for that constitutional amendment was
9 the fact that at the time it was enacted the Legislature
10 had failed to redistrict itself something like twenty
11 or thirty years?

12 A That's true.

13 Q Was that the basic reason?

14 A Yes, that's my understanding.

15 Q In other words, the Legislature had abdicated its
16 express responsibility imposed upon it—

17 A That's true.

18 Q —by the constitution?

19 A My understanding.

20 Q All right. Now, getting back to the sequence of
21 events, I am going to have to rely to some extent
22 on newspaper stories here; you can either confirm or
23 deny what is alleged here in the stories. I am
24 referring here to a bylined article, apparently in
25 the Houston Chronicle of October 10, 1971, with

1 Do Myers' byline which indicates -- the second para-
2 graph reading as follows:

3 "An October 23 deadline for completion of
4 the reapportionment task is rushing toward the Legis-
5 lative Redistricting Board, of which Martin is
6 Chairman," referring to the Attorney General.

7 MR. GREENBERG: Can we ask if you are going
8 to ask a question from a written document, that that
9 document be marked so that later on--

10 MR. IDAR: I would be glad to go ahead and--

11 MR. GREENBERG: I don't want to confuse
12 things, but I think just as a matter of procedure, it
13 might be helpful.

14 MR. IDAR: Mark this, is that the first
15 exhibit in the deposition?

16 MR. GREENBERG: No, there are some others.

17 (The document referred to was
18 marked as Barnes Exhibit No. 2,
19 and is attached hereto.)

20 Q Let me start over again, reading the second paragraph
21 of the same story. "An October 23 deadline for com-
22 pletion of the reapportionment task is rushing toward
23 the Legislative Redistricting Board, of which Martin
24 is chairman, and as of this writing, the staff has no
25 guidelines from the board on how to approach the job.

"The big news" going on, "the one that has

1 the board on high center, is whether to draw 150
2 single member districts or whether to allow multi-
3 member districts in metropolitan areas."

4 Now, my question, based on this news story,
5 is whether or not that statement there that as of
6 October 10 apparently the staff still had no guidelines
7 from the board on this issue of single member versus
8 multi-member districts in the major metropolitan
9 areas.

10 A I don't know whether that was before or after the
11 guidelines were given as far as Harris County was con-
12 cerned.

13 Q Now about would that be a true statement as to the
14 rest of the metropolitan areas in the state?

15 A I would assume at that time that the rest of the
16 metropolitan areas were still being talked about and
17 discussed informally by members of the Commission.

18 Q And the staff had not yet been advised whether to go
19 for single or multi-member districts?

20 A That's right.

21 Q Well, I am going to give you that, since that has been
22 marked as an exhibit here. We have another news story
23 here in the Houston Chronicle, which apparently was
24 the Chronicle for October 12, 1971, with a byline by
25 Reid Beveridge, and would you go ahead and mark this.

(The document was marked for identification as Bureau Exhibit No. 3, and is attached.)

Q Now, reading from a portion of this story -- and it will be part of the record here, I suppose, if anybody wants to have it attached -- at one point that, quote, Commissioner Armstrong here -- I am going to read the pertinent paragraph:

"Asked what, if anything, has been decided on House redistricting, Armstrong said, 'Not one thing that I know of. That disturbs me because of the time problem. I think we should get started right away.'"

Would that be a fair statement of your recollection as to the date -- as to the situation at the time this news story was run?

A Why, I don't have any idea, sir. As far as what Mr. Armstrong was talking about, you will have to ask him about the facts, as far as what we were doing on October 12, I mean I don't remember what -- specifically what the Commission was doing, and as I have testified to earlier here today, the workings were informal. Mr. Armstrong knew where the staff was, knew where they were working, he was free -- Mr. Armstrong or any other member of this Commission was free to -- as Speaker Mutsaers was working separately on drawing his own bill, Mr. Armstrong certainly had the right

to draw single member districts and to start working on them any time he wanted to.

Q Well, my question, though, is whether or not you recall -- let me rephrase it. Do you recall whether or not by October 12 the staff had been given any guidelines by the board as an official body on how they were to proceed on the major metropolitan areas?

A It was my thinking, and it has been my experience on other redistricting bills, to go ahead and get the rural districts drawn and then the decision to -- whether to divide the cities up into individual member districts can be a last-minute decision after you have got the rural areas worked out, because you are talking about dividing up within the confines of Bexar County.

Q Yes. But we are here -- following that line of argument, we are assuming here that on or around October 10 or October 12 this board was acting in a vacuum, that no work had been done toward legislative redistricting in Texas, which was not the case, is that correct?

A That's not true.

Q Huh?

A That's not true.

Q That's right; you had gone through a regular session

1 and a special session of the legislature, at which
2 considerable work had been done by you and a number
3 of other people on redistricting.

4 A That's right.

5 Q So that it wasn't as though the board started afresh
6 with no prior knowledge or background or information
7 or plans upon which to rely, is that correct?

8 A Well, the only plans, as far as House redistricting,
9 that we had to rely on, were unconstitutional, and
10 they had been declared unconstitutional by the Texas
11 Supreme Court, so we did not have any constitutional
12 plans. I did not see -- of all the maps that that
13 House committee had in their file, they were all
14 unconstitutional in the eyes of the Texas Supreme
15 Court, and had been so declared.

16 Q I recognize that, but the point I am making is the
17 fact that the Texas Legislative Council, working
18 with the Legislature and the Senate and House
19 committees dealing with House and Senate reapportion-
20 ment, already had a tremendous amount of data upon
21 which to work.

22 A Sure.

23 Q Okay. Going on now to the next date here on the
24 time -- this is really not so much a matter of time;
25 I just want to see whether you had similar experience,

1 as apparently Mr. Martin did. Would you mark this
2 one.

3 (A document was marked Barnes
4 (Exhibit No. 4.

5 Q I have here in my hand another news story from the
6 Houston Chronicle, apparently ran on October 13, 1971,
7 and it again is bylined by Reid Beveridge. There is
8 one paragraph in this story that I would like to
9 quote for the record, because I would like to lay a
10 predicate for a question I would like to ask you.
11 This paragraph reads:

12 "However, Martin apparently is feeling
13 considerable pressure from the Dallas establishment
14 to retain countywide districts like the one that now
15 elects all 13 of Dallas' House members at large."

16 My question to you is, of course, you
17 don't know what kind of pressure Mr. Martin received or
18 whether this would be true as relates to him, but
19 did you receive any pressure yourself on whatever
20 they consider here to be the Dallas establishment?

21 A I don't know what the Dallas establishment is. I
22 testified to two previous questions that the over-
23 whelming number of people that contacted me from
24 Dallas County were for at large representation.

25 Q Would you categorize those people as to whether,

1 for example, were they business or professional groups
2 or representative attorneys, representatives of major
3 banks or major business interests?

4 A Oh, I would say that it was a cross-section of the
5 Dallas community, I would say, I am sure there might
6 have been more business men than there were anybody
7 else in that category. Some letters you get from
8 people that are -- you don't know what their profes-
9 sions are.

10 Q Okay. Would you mark this.

11 (A document was marked for
12 identification as Barnes
Exhibit No. 5.

13 Q I would now like to refer to another news story
14 that apparently appeared in the Austin American
15 Statesman on October 16, 1971, and this first para-
16 graph reads as follows;

17 "Lt. Gov. Ben Barnes said Friday night
18 he has ordered his staff" -- let me back-track a
19 minute here. This apparently is an AP story; it has an
20 AP signet here indicating the story emanated in Hous-
21 ton. Then it goes on to say the following:

22 "Lt. Gov. Ben Barnes said Friday night
23 he has ordered his staff to prepare a single-member
24 Texas House redistricting plan for Houston, regardless
25 of what the Legislative Redistricting Board approves

10
1 for the state's other urban areas, the Houston Post
2 said in its Saturday editions."

3 Do you recall whether or not that is a true
4 quote of whatever you might have told the Houston Post
5 on this occasion?

6 A Well, I don't recall, but I assume that was about the
7 time that the other members of the board had agreed
8 to go along with individual member districts for
9 Harris County.

10 Q And is it on or about October 16 that you went ahead
11 and ordered your staff to start on a single member
12 district?

13 A I am not for sure about the date. It could have been
14 several days prior to that time. I don't know. That
15 could have been when we made it public. I don't know
16 that we necessarily made it public the day that we
17 did it.

18 MR. IDAR: We marked this one (5) for admis-
19 sion.

20 Q (By Mr. Idar) Under interrogation -- I don't recall --
21 this could have been by Mr. Bery -- you indicated that
22 in your opinion, minority groups may be better off
23 if they were put in several different districts rather
24 than concentrated in one or more individual districts?

25 A That's not what -- I didn't say that I had any proof

of that. I said philosophically that I felt that way.

Q Do you relate that in any way to the possibility of diluting the voting strength of minority groups when you spread them out among different districts rather than---

A I have not -- I have not seen any proof that there has been dilution from that large representation.

Q Suppose you do have an area, say, with 75,000 Mexican-American or black voters in it, and as we know the

difficulties in voting -- redistricting, it would be conceivable that those could be at least split off in two or three or more areas so as to spread them out among other districts in line with the

philosophy that you have just indicated you believe in. Wouldn't that be a dilution of that vote?

A If you had individual member districts and you had 75,000 people living in the district and you split them four different ways, yes, that would be dilution; but you would have to take it a step further and

see what kind of people that were elected to represent those four areas you diluted that strength to.

Q All right. Now, you made reference in your earlier testimony that in South Texas you divided one town down the Main Street. Can you tell us what town that was?

1 A It's in Hidalgo County. I can't think what the name
2 of the town is. It's a small town in Hidalgo County.

3 Q Okay. You made another allusion in your testimony
4 that I am a little curious about. You indicated that
5 one of the factors you considered in arriving at
6 House redistricting -- you can restate this if I am
7 incorrect; you might have stated as to both Senate
8 and also as to the House, one or the other or both --
9 that you felt that one of the factors to consider was
10 to disrupt the least possible the current political
11 climate in the state; you didn't want to disrupt the
12 political climate in the state.

13 A No, what I -- what I meant -- I may argue with you on
14 that. What I meant was to go ahead and get the
15 district lines drawn, no matter what they were going
16 to be. You're talking about the filing deadline of
17 February 7 in Texas. I think people need to know what
18 district they are in several months before election.
19 I think would-be candidates need to know what the
20 district lines are when they make their plans to run,
21 and what I was referring to was the political processes
22 of 1972 not to be disrupted any more than what they
23 had already been disrupted by people not knowing where
24 the lines were in October of 1971.

25 Q As I recall -- I might be subject to correction here,

but I was under the impression that at the time you were responding along this line, you were referring not so much to the time element but to the disruption of the existing political lines and so forth in the particular areas.

A No, I am not -- I am not -- if I did testify to that, there is a misinterpretation of my remarks.

Q All right.

A I was talking about from -- I'm talking about if a city is going to be split, the voter is entitled to know sometime before filing deadlines exactly where the political lines are going to be.

Q Okay. Going on now to something else, you indicated earlier in your testimony that you missed one of the meetings of the board; this was a public meeting.

I believe that was when you were down in San Antonio?

A That's right.

Q Was this a meeting where Mr. Armstrong allegedly was going to raise the question of single versus multi-member districts before the board?

A I had no idea that Mr. Armstrong was going to raise that issue, and Mr. Armstrong gave no notification of this, and we only have Mr. Armstrong's word of -- and he didn't bring it up at the meeting; he told the press afterwards that he would have -- that he was

14 1 planning to bring it up. But I received only two
2 hours' notification that that meeting was going to
3 meet, and there was no important business transacted
4 at that meeting. And we had two other meetings after
5 that. If Mr. Armstrong had wanted to make that
6 motion publicly, he would have had that opportunity
7 to with all five members of the Commission there.

8 Q I have here the proceedings of the meeting of this
9 board held on October 6, 1971, which apparently was
10 a public meeting, because it reflects the fact that
11 Senator Maury and Victor Robertson and a number of
12 other people appeared, and apparently it indicates
13 that members of the board that were present included
14 Mr. Martin, Mr. Metscher, Mr. Calvert, and Mr. Arm-
15 strong. Is this the meeting that you missed?

16 A If that is what that record reflects, that is the
17 meeting.

18 Q Do you recall specifically missing the meeting at
19 which Senator Maury testified, for example? Would
20 that help you?

21 A I think Mr. Maury probably testified at two meetings.
22 I think I was there -- at least, he was present.

23 Q Well, the last witness at this particular meeting was
24 John Alamis.

25 A That's the one I missed.

1 Q All right. Did you after you returned make any
2 inquiry as to what had gone on at this particular
3 meeting?

4 A Yes, I did. I was told that Mr. Alanis was some hour
5 late and they had to wait on him. He came in and
6 testified very briefly that he wanted Bexar County
7 divided into individual member districts, but his
8 presentation was very brief.

9 Q Apparently, as far as Dallas County is concerned, you
10 had a number of people and you had letters and corres-
11 pondence and other contacts, and the opinion there
12 was mixed as to what the people wanted?

13 A Well, it was this, there was a division, but as I
14 testified to earlier, the overwhelming amount of
15 contact that I had was from people that wanted at
16 large representation, as you have asked me earlier.

17 Q Okay. Are you familiar with the Dallas firm known
18 as Lewis, Bowles & Grace, that is supposed to be a
19 public relations and polling firm there in Dallas?

20 A Yes, I am familiar with them.

21 Q Were you familiar with the fact that a Mr. Victor
22 Robertson from that firm testified at this particular
23 meeting that you missed?

24 A No, I wasn't familiar -- I knew that Senator Neury
25 presented the poll; I didn't know that there was a

1 man from the firm that presented the poll.

2 Q You did know about the poll?

3 A Yes, I was told about the poll or read about it in
4 the newspapers; it was reported in the newspapers.
5 I don't know where I got knowledge of the poll, but
6 it was called to my attention, yes.

7 Q And you further know that the poll reflected that
8 61 per cent of the people in Dallas had a preference
9 for single member districts?

10 A Well, of course, yes, I read that. A lot of the
11 polls, that's something -- again let me say I am for
12 individual member districts, and I think it was explained
13 that maybe higher than 61 per cent, but on polls it
14 is very important how the question is worded, and I
15 think you have got to take a poll and study it and
16 not read -- we politicians have a tendency to always
17 use polls or release polls on what people are think-
18 ing about ourselves and issues, and a lot of times
19 the way the question is worded has a great deal to
20 do with what the poll reflects.

21 Q In your earlier testimony, talking about the single
22 member districts and why they were not enacted in
23 the House bill the board ultimately approved, you
24 indicated that the time factor was not the -- I think
25 you---

A I said the sole criterion.

1 Q Or the absolute criterion?

2 A Yes.

3 Q All right. In your opinion, then, it could have been
4 possible within the time left to come up with a
5 single member district plan?

6 A Yes, I think it could have been possible to come up
7 with that plan, yes.

8 Q Would that apply to all of the major metropolitan
9 areas?

10 A Yes, I think it is possible to divide them. Now, how
11 good a division it would have been, I don't know.
12 But it would have -- to do it intelligently---

13 Q Let me rephrase my question. Could it have been
14 possible to come up with a plan that would have met
15 the constitution and other criteria that you used in
16 the plan that was adopted?

17 A Well, counsel you are asking me again to speculate
18 which I -- Bob Johnson told the Commission that it
19 would be extremely difficult -- he said this in a
20 public meeting; he is director of the Legislative
21 Council -- it would be extremely difficult to come
22 up with a bill that is by an individual district,
23 but as far as actually drawing the lines dividing
24 the state into 150 districts, yes, you could have
25 done it. How good a job you would have done or --

I don't know. I have not had a chance to talk to people in Houston about the division of Harris County into the what, 24 districts that we did? I don't know what kind of mistakes have been made and how many people are unhappy, because if you could split precinct lines, if you could split voting precincts, you could do a much better job, but you have got to follow those census tracts, and the fact that you can't split census tracts requires a great deal of time in dividing these cities.

Q Well, we realize that, but it is true, is it not, that the Legislative Council was working very closely with Mr. Spellings and Mr. Hooser?

A Yes.

Q It is further true that they had available a staff of anywhere from fifty to sixty people?

A No, I don't think that is -- I don't know that the --

Q Do you know what the size of the staff is?

A I don't know what the size of the Legislative Council staff is, nor do I know how many people that Mr. Johnson had assigned on legislative redistricting.

Q If Mr. Johnson testified to the size of it, I suppose we could rely on that?

A Well, if he said there is fifty or sixty people.

Q You have been in Texas politics now, was it for eleven

years?

A Eleven years.

Q You served in the House how many years?

A I served in the House for four years and I served as Speaker four years.

Q And as Lieutenant Governor now?

A Three years.

Q You have rather extensive experience in Texas politics?

A Some would say that. Others would not.

Q And you have experience both at the local level, as well as on the statewide level?

A Yes.

Q You have conducted local campaigns, as well as---

A Yes.

Q ---statewide campaigns?

A Yes.

Q Would you care to make any comment, based upon your own -- I am not going to ask you this question based on what a political scientist might testify to. I am asking this question based upon your own experience as a practical politician in Texas politics.

A Thank you.

Q Because I believe that your word would have, I think, based on your experience, a lot more weight than that of the theorist or someone on some books dealing

with political science. My question is, do you have any opinions as to the cost of campaigning in a district with 75,000 people in contrast with a district that can run anywhere from seven to several hundred--

A It would be considerably less in a smaller district.

Q And the same would apply to one such as Dallas, with a million, three hundred thousand population?

A That's true.

Q Do you feel that we would get better representative democracy, say, as--

A I don't know that you would get better representatives or I don't know that the counties would be better represented. Let me say that I don't know. I feel like, from a personal philosophical standpoint, that the House would be better off if every man represented exactly the same number of people, and when the House is better off, I think the people would be better off. That is my personal political philosophy. I do not know, I cannot say that Bexar County would be better represented as far as this delegation versus the one -- the one they have got now versus the one that would be elected.

Q I realize that the quality of men elected would have a lot to do with it--

A True.

1 Q --whether they are elected from a single member or
2 a larger district. My question simply related to
3 whether or not the -- we are always talking about
4 that government is best that is closest to the
5 people.

6 A That's what--

7 Q Would you agree with me that a representative elected
8 from a constituency of 75,000 people would be closer
9 to the people than one elected from a constituency of
10 1,300,000?

11 A Well, in the opinion of a farm boy from De Leon,
12 that would be true, but I am not saying that a man
13 that is elected by a million, three hundred thousand
14 people can't be close to the people, because he can.
15 But it is a more difficult task.

16 Q Now, you were referring to Bexar County in your earlier
17 testimony. They were querying you about community of
18 interest, and I think it was relating to Senatorial
19 District 21 and so forth. You are fairly familiar
20 with San Antonio and Bexar County; I think you have
21 been there a good number of times?

22 A Yes, sir.

23 Q You are familiar with the west side--

24 A Yes, sir.

25 Q --which is a major geographical area populated by

22
1 Mexican Americans.

2 A Yes.

3 Q Are you familiar further with the Edgewood Independent
4 School District?

5 A Yes.

6 Q Which is, I think, pretty close to 100 per cent
7 Mexican Americans, is that about right?

8 A Uh huh.

9 Q Now, you are further familiar with the fact that this
10 particular district has -- that the plaintiffs from
11 that particular district have just prevailed in a fed-
12 eral court suit that is going to create some very
13 serious problems for financing---

14 A Yes, sir.

15 Q ---Texas public education?

16 A Yes, sir, that's right.

17 Q My question is, even in the major cities you may
18 have particular geographic areas that would have a
19 community of interest in contrast to other major
20 geographic areas within that particular city, is
21 that correct?

22 A Yes, that's true.

23 Q As contrasting the Edgewood Independent School
24 District, say, with the Alamo Heights or the Northeast
25 Independent School District in San Antonio; that would

1 be true?

2 A That would be true.

3 Q Okay.

4 (Recess)

5 MR. IDAR: If you all don't mind, let's
6 get on here. Mr. Barnes has agreed to proceed with-
7 out Mr. McDaniel, so if there is no objection, we
8 will go ahead. Mr. Curry?

9 MR. CURRY: Yes.

10 Q (By Mr. Idar) One thing that I would like to go into
11 now is are you familiar with what we mean that an
12 issue is justiciable in the courts?

13 A If what?

14 Q Justiciable. In other words, you can litigate it,
15 it is open to question?

16 A Yes.

17 Q And are you familiar with the fact that multi-member
18 districts are that type of an issue when they arise
19 in legislative redistricting?

20 A Yes.

21 Q I gather that the Attorney General probably advised
22 you all as to that when you were in the---

23 A Yes, sir, he advised us to that, but he also advised
24 us that as the state's chief legal officer, he thought
25 that multi-member districts were constitutional.

both in the State Supreme Court and United States Federal Court.

Q Yes, but I gather that he further advised you that they could be contested in courts and it would be up to the courts to determine actually whether they were constitutional or not?

A Yes.

Q Okay. Did he further advise you as to the guidelines, constitutional guidelines relating to the dilution or minimization or cancellation of minority group votes, such as blacks or Mexican Americans or other political elements that could constitute an identifiable group?

A Yes, he did in general terms.

Q Do you know whether the board ever gave the staff any guidelines along those lines, cautioned them about this in particular?

A No, but the staff was present when the Attorney General was outlining most of these things.

Q Do you know whether the State of Texas, as a state, has ever had a policy as to at what point you would go into single member districts in contrast to your larger multi-member districts?

A No, I don't know that the -- the state as a political entity has not had any guidelines, no.

Q You don't know that the state has ever taken the position that once a county reaches, say, a million population, that it is at that point where that county should be divided?

A No, I don't think they have taken that position. If they have taken it, it has been without my knowledge.

Q The Attorney General did not advise you along those lines?

A Are you telling me that the Attorney General of Texas in the past has taken the position that when a county reaches a million population, it must be divided?

Q No, no, I am just simply asking you whether he ever advised you of that.

A No, he did not advise.

Q Do you recall whether Speaker Hutcheson brought this up in any way?

A No.

Q You further indicated that it was your opinion that Mr. Calvert was in favor of multi-member districts for the major counties?

A Yes, that's what my views were.

Q Did he ever express this to you?

A He was quoted in the paper to that effect.

Q Of course, we don't want to rely too much on the papers, do we? I was wondering whether or not he had ever actually so indicated to you.

A I don't know that Mr. Calvert ever said, "I am positively committed to at large representation and wouldn't change for anything in the world." I don't know that he ever put it that way, that positive, but in our conversation it was very clear to me that he was in favor of at large representation.

Q Well, you indicated in your testimony that philosophically, you were inclined and still are, towards single member districts.

A I am.

Q But that the way you assessed the feelings of the board, you felt that Mutscher and Calvert were going to go for multi-member?

A That's right.

Q And you and Armstrong were going to be for single member, with Mr. Martin apparently undecided, and I was just wondering on what basis you concluded that Mr. Calvert was in favor of multi-member, apart from reading it in the newspapers.

A In discussing it with Mr. Calvert, I came to this determination, and he asked questions, attended the Commission hearings.

Q Did Mr. Calvert ever indicate to you that he would rely to a large extent on your judgment on this issue?

A Mr. Calvert did not speak to this particular issue.

Mr. Calvert from time to time has talked to Crawford and me and told the Attorney General that -- he is chairman of the Commission, and me being the Lieutenant Governor, and speaking about senatorial redistricting now, he did tell me this. I was first familiar with senatorial redistricting being the present -- I don't know about House redistricting, that -- he didn't indicate to me that he was going to rely on me any more than he was going to be on his own judgment.

Q I think based on newspaper stories -- and there again you can correct me if I am mistaken, because I certainly don't want to rely on them -- you indicated somewhere down during the course of these considerations that you felt that there was always some pressure in Harris County for single member districts. I think you referred to the fact that they had previously divided it into three mini-districts, as I think, three districts with several representatives in each one.

A Yes.

Q And that you would rather prefer that rather than the board doing that for Dallas and Bexar and other major counties, you would like to see some precedent along those lines established by the legislature.

A What I said was---

Q Am I trying to -- am I quoting you correct?

A What I am saying is that -- what I said was that Harris County had already been divided and we had -- and the precedent was, and we were probably going to divide it again. Rather than divide it on congressional or senatorial or some other political barriers, to go ahead and get individual member districts drawn in Harris County. We were successful in doing that.

In Dallas County and Bexar County and Tarrant County and the other counties, I want to see it done like that; I said that I would like to see the legislature do it.

Q But the fact does remain that the legislature did not do it?

A That's right.

Q And that they did pass an unconstitutional bill and that therefore, under the constitutional amendment, the entire responsibility, whether wisely or not, was placed in Texas---

1 A Right.

2 Q ---on the shoulders of this board?

3 A Right.

4 Q And you could have assumed that responsibility, which
5 is what you did, except that you decided that you
6 would go along with multi-member in all major
7 counties except for Harris County?

8 A That's right.

9 MR. IDAR: I guess that's all.

10
11 Questions by Mr. Cunningham:

12 Q I just have a few questions, Governor Barnes, because
13 I think they have already been covered by Mr. Richards
14 and Mr. Idar. First of all, did you have any dis-
15 cussions with Speaker Mutscher concerning a single
16 member district plan for Dallas County, Texas?

17 A I told Speaker Mutscher that I wanted single member
18 districts for all the state.

19 Q Did he---

20 A If you are talking about Dallas County, we may or
21 may not have had conversation. I don't recall that
22 specific.

23 Q I am primarily concerned with Dallas County, Texas,
24 and others are more concerned with statewide, Jeffar-
25 son County, but right now the people I represent

are concerned with Dallas County and single member districts for Dallas County, and this is why I am limiting my questions---

A Okay, fine.

Q ---as to whether or not you discussed it with Speaker Nutscher.

A I do not recall a specific discussion about Dallas County.

Q Okay. Did you have any conversation with Commissioner Armstrong concerning single member districts---

A Yes.

Q ---for Dallas?

A Well, no, again, single member districts for all the state, now.

Q Okay. Well, then, all your conversation with the other Commission members was concerning a single member district for the entire state and not just the -- any one or more particular metropolitan cities?

A That's correct. I talked to Commissioner Armstrong about division along senatorial district lines also.

Q Okay. Was a plan ever presented to you which outlined or divided Dallas County into single member districts?

A Did Dick Reed present one to the -- did Reed or Maury

present one to the board?

MR. McDANIEL: I don't know.

A Well, as a member of the board, there may have been, and Mr. Spellings will be able to answer this question for you because he will have more knowledge than I, but whether -- now, I think the college student from Arlington presented one that of course divided all the state into 150 member districts.

I don't know the answer to your question, whether I was---

Q Right now you have no personal knowledge -- you do not recall whether or not you ever saw one or one was presented to you as a member of the board---

A I am not saying---

Q ---requiring Dallas---

A I am not saying -- there might have been three or four presented to me as a member of the board. I am not trying to evade your question. I can find out for you whether it was presented. I don't know whether Oscar Maury presented a plan. The one hearing I missed was when he put on his major testimony. I don't know whether Oscar Maury presented a plan or not.

Q Are you aware of the number of blacks that are -- that reside in Dallas County, Texas?

1 A No, not by specific number, but about 12 per cent
2 of the voting population, am I right?

3 Q I think that the 1970 Census will show that it is
4 better than 16 per cent.

5 A Better than 16 per cent?

6 Q And that this 16 per cent is concentrated into
7 forty-four census tracts, where in 33, 85 per cent
8 of those are black. Did you know that, sir?

9 A No, I didn't.

10 Q Are you aware of the cost figure for a black running
11 at large in Dallas County, Texas?

12 A I am sure the cost figure would be the same for
13 black or white or brown running at large, and I am
14 not exactly, but I know it's a costly---

15 Q Affair?

16 A Yes.

17 Q And it would be considerably less if an individual
18 ran from a single member district than if he ran at
19 large?

20 A I think under normal circumstances, that is a correct
21 assumption.

22 Q Are you aware that there have been blacks who have
23 attempted to run at large that were not on the
24 ticket -- in other words, the regular 15-man ticket
25 -- and have lost? Are you aware---

1 A That was the question I asked a while ago. I was not
2 familiar with how many blacks had attempted to run
3 for legislative spots in Dallas County. Of course—

4 Q Well, were you aware that at least one had run in
5 1963 on the — as a Democrat but not on the ticket,
6 and lost; did you know this, sir?

7 A No, I didn't know that. How many other times has
8 that happened?

9 Q Twice. In other words, there have been two that
10 have run not on the ticket, and each case, they have
11 lost. And are you aware that the only way that a
12 black can run in Dallas County and be elected is
13 that he be a part of the team or slate, as they call
14 it?

15 A Well, no, I am not aware of that, and I am not going
16 to argue that with you because that may or may not be
17 true, but I know in Harris County, in Houston, for
18 instance, that that argument was made, and then we
19 saw a City Councilman run against the slate, so to
20 speak, run against an incumbent City Councilman, and
21 this black Councilman — the black candidate was
22 elected citywide in Houston, so I really think you
23 are talking about the personality of individual
24 elections. I am not disputing your fact but —
25 the fact that you are just making but I say it's still

34 1 a question of political judgment.

2 Q Okay, and probably my final question: If you had
3 talked with Speaker Mutscher and he had indicated to
4 you that he would vote for single member districts
5 statewide, and particularly Dallas County, Texas,
6 would your vote have been different?

7 A My vote was consistent on -- if individual member
8 districts had been put to a vote, just said "Are
9 you for single member districts?", I would have
10 voted for it every time. I want to make that clear
11 now, the circumstances we didn't get, but I wish
12 that Speaker Mutscher and the House had drawn indi-
13 vidual member districts during the regular session,
14 and certainly, I wish that Speaker Mutscher had sup-
15 ported individual member districts.

16 MR. CUMMINGHAM: Okay.

17
18 Questions by Mr. Steele:

19 Q Mr. Barnes, I am Cleo Steele.

20 A Yes.

21 Q Representing intervenors in the Tyler case. I rep-
22 resent a group of blacks in Dallas County, and we are
23 interested primarily in House reapportionment.

24 A Can I ask you a question?

25 Q Yes.

1 A Distinguish the group of people you represent, how
2 they differ from---

3 Q Well, actually, I shouldn't have let Cunningham get
4 ahead of me, because he and I represent some of the
5 same interests. I represent Thelma Washington et
6 al., and he is with a group of black elected offi-
7 cials but the questions will be along the same line;
8 I will try to---

9 A Is it safe to assume that you represent the people
10 and he represents the politicians, then?

11 Q That's about right.

12 MR. CUNNINGHAM: First time anybody ever
13 said that.

14 Q Talking about him getting ahead of me there, I will
15 have to eliminate some portions that he has already
16 gotten them out of the way. I need to generalize with
17 you a little bit first.

18 A Okay.

19 Q How long have you been in politics, running for
20 office?

21 A Eleven years now.

22 Q Eleven years. All right. And you indicated that
23 you are fairly familiar with the black community of
24 Dallas, so to speak, that you are aware of the number
25 of blacks there, generally?

1 A Yes, generally. Not near as familiar as I want to
2 become.

3 Q All right. And you don't know exactly how many
4 blacks there would be there, then---

5 A No.

6 Q ---numerically?

7 A Well, your co-counsel before said 15 or 16 per cent.

8 Q 15 or 16 per cent.

9 A Yes.

10 Q All right. How about Chicanos, or Mexican Americans,
11 are you familiar with their strength?

12 A I believe about 5 or 6 per cent in Dallas County.

13 Q All right. In the process of running for office, have
14 you ever had occasion to study in any depth the
15 racial makeup of Dallas County and where these races
16 are located in attempts to get their support in an
17 election?

18 A Yes. Well, yes, I have not necessarily studied
19 exactly where they are geographically from that
20 standpoint, but I have worked very hard to merit
21 the support of the black and brown Texans in Dallas
22 County.

23 Q Okay. And you have indicated the reason that Harris
24 County got the single member district plan, as they
25 did, was because of the overwhelming request or

support for it?

A Well, yes, and another point too. Harris County was already divided into districts, not individual member districts, but they had been already electing people on a district basis. Speaker Mutscher even supported dividing Harris County.

Q All right; and you also indicated that the reason Dallas County was not considered for single member districts was because of the overwhelming—

A Well, now, they were considered. I think the reason Dallas County didn't get individual member districts, the votes were not there for individual member districts for the rest of the state. Dallas County was not separated. I understand that you, representing clients, you are attempting to separate. What I am saying is Dallas, Tarrant, Bexar and the others in the state were not separated. Harris County drew the distinction of being separated because they had by a previous legislature, had already been divided, and even in the unconstitutional bill that the House passed, they did divide Harris County into something less than multi-member representation.

Q All right. Would you say that the reason Dallas County and the other larger metropolitan systems that now have multi-member districts got those multi-member

districts or plan was approved continuing the multi-member districts in those areas because of the fact that you received what we are calling overwhelming support for multi-member districts?

A Well, now, Mr. Calvert, Speaker Mutscher, and General Martin will have to answer that question as far as they are concerned.

Q As far as you are concerned?

A Well, no, Certainly I was influenced by the citizens of Dallas County as an elected public official should be, even though that the majority that contacted me felt that way, I have not changed my position philosophically, and I would like to go back to Dallas County and Bexar County and Tarrant County and try to convince those people they are wrong. But I didn't have time to debate the issue with them. I guess just to be a hundred per cent candid, in the twenty days we had -- and it really wasn't twenty days; we are down to a ten-day decision -- I didn't have time to debate the issue. We had to get the job done.

Q All right. Well---

A And certainly public views and expressions of interest from those counties had influence on me as a public official.

1 Q All right. Well, I am just trying to ascertain
2 whether or not this overwhelming support that we are
3 talking about is in fact a large number of interested
4 citizens are contacting you or if this really is just
5 a few calls you may have had.

6 A Well, now, I didn't have three or four thousand let-
7 ters or calls from Dallas County, no.

8 Q All right. I can understand that you may have had---

9 A You had -- first of all---

10 Q ---a large number of calls from Harris County because
11 I can see that they really wanted the single district
12 plan.

13 A You had both daily newspapers in Dallas County
14 endorsing at large representation.

15 Q All right. In the process of approving or assisting
16 in drafting a plan, were you in contact with any
17 black elected officials in Dallas County, Representa-
18 tive Holmes or Dr. Conrad or George Allen or any
19 other black business men or people in an influential
20 position?

21 A Oh, I have to say that Mr. Holmes -- and I did not
22 receive his call; that was a breakdown in communica-
23 tion. I did not receive his call and he tried -- he
24 did try to contact me, and I am very sorry that I
25 did not get a chance to talk to Mr. Holmes. I did not

1 know he was calling me.

2 Q So you were not in contact with Mr. Holmes or other---

3 A No. If you are asking me if I sought out Dr. Conrad
4 and Mr. Allen and Representative Holmes, I did not,
5 and it was not a matter of me neglecting those people.
6 It was just a matter of reacting to -- I was just
7 getting so many people contacting me, I didn't take
8 the initiative to contact anybody, black, white
9 or brown---

10 Q I am not---

11 A ---in Texas.

12 Q I am not asking you if you necessarily contacted
13 them. I am trying to see if they contacted you or---

14 A As far as a letter from Dr. Conrad or George Allen,
15 I may or may not have had -- I will be happy to look
16 in my files to see.

17 Q All right. Now, were you in contact with black citi-
18 zens generally of perhaps lesser consequence than
19 would be Representative Holmes?

20 A I have got -- I hope to have many black friends in
21 Dallas County, but I could have gotten letters from
22 some black people in Dallas County and just -- and
23 not knowing them, I would not know what their color
24 of their skin was just from the letter.

25 Q All right. So that other than what you may have

read in the papers or -- well, did you read anything in the papers as to what blacks would desire as pertained to single member or multi-member districts?

A I read statements that---

Q Did you have any input as to what blacks would wish to have there?

A Yes, I had some input. I can't -- I really can't tell you how much I had or what type of gauge, but you know, I might not have been contacted by that many black people because they -- if they felt strongly about individual member districts, because they knew I was for them.

I mean Speaker Nutscher and Crawford Martin and Mr. Calvert, they might have gotten more mail than Mr. Armstrong and I did, because we both declared ourselves publicly in the paper.

Q All right. In the process of putting together the statewide plan, do you know whether or not at any point in drafting it, whether you or your staff or the Attorney General's office or what have you, there was consideration given to black voting groupings or black housing areas; in other words, in drawing the plan did you look to see whether or not you might be drawing the lines in such a manner that you cut through racial groupings or---

1 A Well, in Harris County I am sure the staff probably
2 gave some consideration to this. I don't know. You
3 will have to ask the staff that worked on lines.

4 You see, Dallas County, with at large representation,
5 letting them run at large, there was not considera-
6 tion given to that because---

7 Q Well, not particularly Dallas County. I was just
8 wondering if there was consideration given to racial
9 groupings, considering a statewide plan.

10 A Well, in Harris County there may or may not have been.
11 That is a question the staff will have to answer.
12 But with the at large -- with most of the black
13 citizens living in the urban areas in the other
14 metropolitan counties running at large, I would say
15 that there was not a great---

16 Q All right. Now, in situations where you were going
17 to leave the multi-member districts in existence,
18 was there consideration given to the effect this would
19 have on blacks to have to elect their representative
20 at large or the consideration of black political
21 aspirants who would have to run at large, and the
22 economic consequences?

23 A Well, I think everyone was aware of what at large
24 representation meant versus individual member repre-
25 sentation.

Q (Talks to co-counsel.) Okay. It seems that a question should be asked again. In leaving in certain metropolitan areas the multi-member district situation, was there consideration of the fact that black political aspirants would have to run at large and the economic burden is put on the black candidates, and was there consideration given to the fact that blacks in choosing representatives, would not likely, due to their inferior voting strength in a situation like that, would not likely be able to get two to three candidates elected?

A Well, I think that it is going to have to be proven that at large representation discriminates against a black's chances of being elected to the Texas House of Representatives from Dallas, and---

Q Right. That's what we are fixing to do.

A I know, but no one has proven that to me, now. Philosophically, I concur with your argument; I concur with your argument about the financial burden that it places on black and white and brown and everybody. I mean I would like to decrease the cost of running for public -- for the House of Representatives. I think individual member districts do that. But it is not clear in my mind that it discriminates against a black man wanting to run any more than it

discriminates against a white man wanting to run.

Q All right. Now, I am looking at two situations. One -- well, in the first place, we have got a recent court decision and recent law which preclude in drawing apportionment lines intentionally -- well, we will say intentionally diluting racial voting strengths and certain other minority political groupings. Assuming this to be true, in drawing the lines for Texas I need to know if the various commissions and the various parties having input in the drawing of plans considered these racial and minority political grouping factors when they drew those lines.

MR. McDANIEL: I think it might be helpful to define your term "dilute." What do you mean by "dilute"?

Q All right. Let's leave out "dilute," then, and let's just go faithfully. In drawing the plans was there consideration on the one hand given to minority groupings, you know, whether they cut through the groupings or not, or whether they purposely left the groupings together, was there consideration to minority groupings in drawing the plans statewide on the one hand and in leaving multi-member district situations in certain areas, was there consideration

1 given to minority groupings as far as the expenses
2 go and from the standpoint of citizens having to
3 elect from a wide range of candidates and having to
4 expect representation from a candidate or from an
5 elected official who was not necessarily voted in
6 by them? So I am simply asking you even if you
7 didn't give this consideration in talking with your
8 fellows and in speaking with the Attorney General
9 et cetera et cetera, did you see any consideration
10 given to these factors; did you detect anything
11 other than numerical -- you know, just drawing it
12 so that so many people in a certain district and this
13 sort of thing?

14 A Well, again, let me say I think that in the rural
15 counties, in drawing the lines in rural counties,
16 it would be very difficult to give considerations to
17 racial groupings in redistricting rural Texas; I mean
18 you have got South Texas districts; I am sure we've
19 got some South Texas districts that have got 60 or
20 70 per cent Mexican American population. But I don't
21 know in grouping South Texas counties together that
22 we give consideration to what percentage of the
23 counties were Mexican American and what were Anglo.
24 I didn't give any consideration to this, so I think
25 you are talking about -- you are talking about the

individual member districts, and like I said, I want the staff to answer the questions as far as Harris County is concerned, about how much -- I asked the question of my staff maybe that you didn't draw these lines in Harris County in individual member districts to dilute brown or black voting strength, and Mr. Spellings' answer to me was "Absolutely not."

Q Right. Now -- and I am simply asking even in those rural districts that you are talking about now where you've got the single member districts, in drawing the lines were you cautious in any way, did you note the attempt on the part of the various people having influence to keep those lines so that they didn't cut through certain of these---

A Well, you've got to keep in mind that we were---

Q ---Mexican groupings and so forth?

A We were under order from the Texas Supreme Court not to cross a county line.

Q Uh huh.

A Unless we could justify it. Now, I have got to say in all candor to you that I think we tried to draw a bill as fair as possible, but there was not an instance where we went up and divided Harrison County, for instance, and said we ought to take 10 per cent of the black population out of Harrison County and

put it in with Fannin or Bank County to have a fair racial grouping, no. We didn't carry it that far.

Q All right. Are you familiar with Dallas County politics---

A Vaguely.

Q ---for twenty years or so back?

A I am not a student of the political history of Dallas County, no, I am really not.

Q Do you know how many blacks have been elected to the State Legislature from Dallas County in---

A I served with two blacks from Dallas County, Mr. Lochridge and Mr. Molinas. I know you have a black City Councilman, I know you have a black school board member.

Q Now, the two that you served with, do you know whether or not there have been others elected from Dallas County in the State Legislature?

A Not in the past ten years, because I have been in the legislature then.

Q Were Dallas County given, apportioned so that they were on a single member basis, do you think that there would have been more than two blacks serving in the Texas Legislature?

A I can't really answer that. I mean I don't know. I could draw the -- you might could say if you set out

to draw lines to elect more, but now I believe someone else here today, when I exercised my right to ask people asking me questions, to ask them questions, I asked a question which asked how many had run. Okay. And I believe if I am right, there have been four that have run and two have been elected. That's fifty per cent. I mean, you know, I could draw that comparison---

Q Do you think that---

A ---and say, well, that's really not fair and---

Q Do you think that if Dallas were drawn on a single member basis, that there would be more than four that ran, that would have run?

A I would think so; I would think so. But again, you all are going to have to prove that in this lawsuit.

Q All right. In the process of studying Dallas's makeup, in your attempts to win public office, have you become at all familiar with the social, economic and educational problems that blacks are facing in Dallas County? They are probably similar to other places but---

A I think there are some very serious economic and educational problems that minority groups face in Texas.

Q And are you aware of, oh, let's say the school

1 Desegregation problems blacks are having in Dallas
2 County currently?

3 A No, not more than just newspaper education that I
4 receive.

5 Q I think it was shown in a recent desegregation case
6 that blacks are receiving an inferior education in
7 Dallas County through the public schools in general,
8 especially -- well, because they were in what we call
9 black schools, that the races were to a great extent
10 separated in schools. Are you aware of the fact
11 that Dallas is currently having an open housing
12 ordinance dispute?

13 A Yes, I am aware of it.

14 Q And have you been aware of certain discrepancies such
15 as the Negro Day at Fair Park that was recently cut
16 out here a few years back, and certain things as
17 that?

18 A No, I am not -- I wasn't aware of the Negro Day in
19 Fair Park.

20 Q Or whatever -- all right. Considering the peculiar
21 problems the blacks have there in Dallas County,
22 would you not think that the single member districts
23 for apportionment purposes would better serve
24 black citizens of Dallas County?

25 A I think single member districts would better serve all

people in Texas.

Q I knew that was coming. All right. Finally, and just based on your experiences in running for public office, how much money -- taking me, for instance, just out of law school and all, I decide I want to run for the House of Representatives -- how much would it take me to run at large in Dallas County?

A I don't have any idea. I mean I am not trying to -- but it would cost you a lot more money to run at large than it would from an individual member district, I assume, unless you are much better known than what the average man is who started to practice law. You are obviously good looking and articulate, but you are going to have to have money to get elected.

Q All right. Now, from the economic point of view, running at large for a black in Dallas County would greatly limit the number of people, black people that could run, wouldn't you think?

A Now, are you talking about because of money or are you talking about because of the prejudice---

Q Especially because of money. I think there would be very few blacks in Dallas County who could afford to run at large.

A Well, I would say---

Q There would be a lot more if there were single
 numbers.

A That might be true of all people in Dallas County,
 black, white or brown, as far as the expense of
 running for office.

Q All right. According to the 1970 census, blacks
 composed 25 per cent of the total population in
 Dallas, Dallas County.

A What per cent?

Q Twenty-five per cent.

A Really?

Q According to that reading.

MR. MCANINLY: What is this, now?

MR. COMPTON: We are going to mark
 everything, now.

Q Wait a minute, let me see what -- 25 per cent of
 the City of Dallas.

A I was thinking Dallas County.

Q I might have said Dallas County. All right. Twenty-
 five per cent.

A Yes, you said that.

MR. MCANINLY: What is the total population
 of the City of Dallas, according to that?

(Discussion as to population
 and getting copy of document
 made omitted.)

Q On a single member district basis, can you give me a guess as to how many districts would be what we could call black?

A I really don't know.

Q Do you imagine we could get at least three black representatives if we had single member districts, assuming these are black districts?

A Assuming the blacks are concentrated in areas and you get good candidates to run.

Q Would you agree that Dallas County voting would reflect black voting on the part of blacks?

A I would have to look at that and see.

MR. STEELE: I have to quit.

Questions by Mr. Greenberg:

Q Governor Barnes, my name is Robert Greenberg, and I represent Plaintiffs Marriott and others in the Dallas lawsuit. About three questions. Can you approximate for us how many plans for redistricting the House of Representatives were submitted to you for examination?

A I do not know the exact number. Several plans.

Q Would it be fair to say, Governor Barnes, that you weighed all of the plans that were submitted to you against all the considerations that you have

heretofore mentioned in your final determination that you would approve and sign the two plans, House and Senate, that were ultimately adopted?

A Well, Mr. Greenberg, if you are saying to me did I get my way and the plans exactly as I wanted them, I would have to say no. If you are asking if I think that the plans that we adopted are fair and constitutional, I would say yes but--

Q All right. That's fine. Now, would you agree that if one person was assigned the task to redistrict the House of Representatives as opposed to five people, necessarily that you could expect a different plan?

A Oh, yes, I would think if you just had one person assigned to draw the redistricting lines, it would be different from five. That's not on only redistricting lines but that's on any piece of legislation the legislature would pass.

Q And is yours--

A It would be true on this lawsuit.

Q Is your reasoning behind your desire to have the legislature itself redistrict itself is because in this manner the elected representatives of the people, 150 in the House, 31 in the Senate, that would be part of their job as elected representatives, and

therefore would represent more of the people?

- A Yes, I would like to -- that's the reason why I favor that, and I would be for a constitutional amendment that took the lieutenant governor off this commission if they ever had to do it again.

MR. GREENBERG: Thank you, Governor Barnes.

CROSS EXAMINATION

Questions by Mr. Luna:

- Q Governor Barnes, my name is Earl Luna, and in this lawsuit I represent the defendant Roy Orr, Chairman of the State Democratic Executive Committee, one of the defendants in this case. In regard to the geography, first of all, of the senatorial districts that you were asked about by Mr. Eason, it was pointed out that had you started at -- somewhere on the south side of Bexar County, that it might have been a mile or two or more closer insofar as compactness is concerned; you recall that question?

- A Yes, sir, I recall the question, counsel.

- Q Now, in other senatorial districts in Texas, because of the population, isn't it a fact that there are many more miles across some senatorial districts than are across the one in Bexar County?

- A Oh, yes, sir, I would assume that there are probably

five or six senatorial districts that have a greater geographic distance across.

Q So then whether we are talking about Senate districts or Senate districts and the compactness of them, the number of people that reside in a given area or square mile or some other measurement has a lot to do with the geographical area involved in a district, does it not?

A That's correct.

Q And if compactness means some type of symmetrical design, I would like to ask you in that regard whether or not you have had an opportunity to look at the census tracts and the shape of them?

A No, sir, I have not had a chance to look at the census tracts and the shape of them.

Q Well, generally, the census tracts, you are familiar, are irregularly shaped?

A Yes, they are irregularly shaped. That's not to say that I haven't looked at some census tracts, but if you have asked me if I made a study of the geometrical shape of every census tract in Texas, the answer is no. Nor do I plan to.

Q No. I am just asking you whether or not you are aware that they have no particular symmetrical design.

A Yes, I understand.

Q So then when you add a census tract to get some additional people, you necessarily change the design of what you already had?

A That's true.

Q Or if you take out some people where you have too many, by the same token, you change the design?

A That's true.

Q And then if you were talking about just one county, then you have a different problem from drawing districts statewide that must fit into the puzzle within the confines of the lines of the State of Texas?

A That's correct.

Q You have been asked about cost, Governor, of running for election; these days postage, I guess, are higher than at any time in your memory, right?

A Yes, sir.

Q If a candidate chooses, for instance, to do all of his campaigning by mail rather than going out and see the people, he increases the cost considerably, doesn't he?

A I would assume that.

Q On the other hand, in a metropolitan area if he is using the mass news media, there is not any way in using that mass news media to reach only a portion of the people in a county, so far as you know, is

1 these -- television, newspaper advertising, and
2 so forth?

3 A That's correct. Using the mass media, you are going
4 to reach an overwhelming majority of the voters.

5 Q So whatever the cost of campaigning, so far as
6 radio, TV, newspaper in a metropolitan area is con-
7 cerned, it is going to cost the same amount to run
8 that ad if you are running in a single member dis-
9 trict, as if you are running countywide, isn't it?

10 A Well, it's going to cost the same amount of money
11 for an ad in the daily newspaper or on television;
12 you are correct.

13 Q Now, there has been testimony here by a former
14 member of the legislature from Dallas County named
15 Bob Johnson. Do you know him?

16 A Yes, sir, I am familiar with Mr. Johnson.

17 Q Now, Mr. Johnson: Did you know him when he was in
18 the legislature?

19 A Yes, sir, I served in the legislature with him.

20 Q Mr. Johnson has testified that he ran two races for
21 which he could recall his expenses, and one of them
22 he said was eight hundred dollars for the race, and
23 the other was twenty-two hundred. Now, within
24 that framework of expenses are there many single
25 member district areas in rural Texas or urban Texas

for that matter, that might expect to spend even more than that?

A Yes, Mr. Luna, I spent more than that getting elected the first time from an individual member district. Of course, I had perhaps a greater number of difficulties to overcome than Mr. Johnson did if he got elected for eight hundred dollars.

Q So then it does depend to some extent on how well known a person is in his district when he starts, as far as name identification and that sort of thing is concerned?

A That's true.

Q And certainly how—

A In some instances being known is more harmful than helpful. Go ahead.

Q Yes, sir. Now, then, that brings me around to my next question. It does make a difference, then, the type of candidate that offers himself for election, does it not?

A That's true.

Q Did you ever hear of Mr. Ed Dickar?

A Yes. Did I ever hear of him or know him?

Q Yes, do you know who he is, do you know that name?

A I have heard the name, yes.

Q In politics?

A Yes.

Q As a member of the legislature from Dallas County in either the late forties or early fifties?

A Yes, early fifties, late forties.

Q Republican. Now, do you know, for instance, a Republican who was in the legislature named John Lourance?

A Yes.

Q Fred Agnich?

A Yes.

Q By the way, Fred Agnich is a Republican who is now in the legislature, is he not?

A Yes, sir.

Q Governor, I believe that our testimony here shows, and I wonder if it meets with the facts as you know them, that there was a Republican elected from Dallas County to the legislature in the at large -- under the at large system in the late forties or early fifties, and six or eight more in 1962?

A Yes.

Q Was it six or eight, do you recall?

A It was eight, I believe.

Q And then in a special election thereafter one Republican was elected, and then in a general election, this last election another Republican, that being Mr. Agnich, was elected?

1 A Yes, sir.

2 Q Now, there may have been, the testimony shows, maybe
3 another one or two elected in a special election,
4 another Republican who didn't serve, for a total of
5 about ten Republicans having been elected since the
6 war, World War II. Now, out of that two do you re-
7 call that at least -- or out of that group of
8 approximately ten, that about two of them have been
9 either indicted for or charged with criminal offenses;
10 do you know anything about that?

11 A No, I do not.

12 Q Governor, as far as politics are concerned, is it
13 politically injurious---

14 MR. RICHARDS: We will stipulate.

15 Q ---to a party for one of his local members to be charged
16 with a crime, office holder?

17 A I would think so.

18 Q And as a matter of fact, in the state now there has
19 been a lot of reflection against Democrats in general
20 because there have been charges against some spe-
21 cifically, has there not?

22 A Yes, there have been.

23 Q Now, on the other hand, in 1962 every Republican who
24 was running for the legislature in a contested race
25 did get elected, did he not?

MR. RICHARDS: Are you talking about Dallas

County?

Q Is Dallas County?

A Yes.

Q Would you say as far as what you know about the black community in Dallas, that San Holmes is a reasonably representative and effective -- is a reasonably representative person of the black community and is an effective representative for the black community, as well as the rest of Dallas County?

A I think that San Holmes is a very effective representative for all of Dallas County.

Q And he was elected by all of the people of Dallas County, was he not?

A That's correct.

Q And George Allen in Dallas County in running city-wide for City Commissioner in the City of Dallas, led the ticket when he was last elected, did he not?

A I am not familiar with the voting pattern. I know that Mr. Allen is an extremely popular man in Dallas County.

Q Incidentally, Mr. Allen is black, isn't he?

A Yes, he is.

Q And Mr. San Holmes is black?

A Yes, that's correct.

Q So then the number of black people who are elected in Dallas County would certainly depend on the type black person that offers himself for election, as compared to whoever is running against him, wouldn't it?

A Yes, I would think that would be a safe assumption.

Q As has been stated in the press lately by Dr. Conrad, Dallas County -- or I believe he said Dallas -- is sophisticated enough to elect a black man at large. Do you agree with that?

A Yes, I think it's possible for the City of Dallas or for Dallas County to elect black people at large. But again, that is just an assumption on my part. I have got no--

Q The black population in Dallas County has been growing, has it not?

A Yes, I am informed that 25 per cent of the City of Dallas' population is black.

Q And since we were able to get rid of the poll tax, we have had more active participation from the black community in politics, have we not?

A That's true.

Q And are you aware that at least in the Democratic party a position has already been taken by members of the Democratic party and its officers to advocate

at least three blacks running for different places in the legislature in the next election under the at large system.

A I was not familiar with that fact.

Q About a year or more ago, are you aware that a black community in I believe what is called the Spence area of Dallas, had a problem with wanting a highway that was elevated across the community lowered to ground level because they were afraid that crimes would be committed under that elevated roadway?

A I am familiar with that problem.

Q And are you aware that all of the legislative delegation from Dallas County joined together to help the black community in contacting the Texas Highway Department, and through those contacts, they were eventually successful in getting that highway lowered to ground level for the black people?

MR. RICHARDS: I would suggest that unless the witness has personal knowledge of the contact, it is hearsay you are inquiring of at this time.

MR. LIMA: Well, we have our objections at the time of court -- at the time of trial.

MR. RICHARDS: Well, I put it on record now for you to try to cure it if you know how, so you would know what the objection is.

A I know that the Highway Department took that action, Mr. Luna. I know that the entire Dallas County delegation was interested in this being done. About the contacts that were made by individual members, I don't know what individual member of the legislature contacted what person, but I know that it was something that the entire delegation was interested in.

Q Now, Governor Barnes, as a member of the legislature and then as Speaker and Lieutenant Governor, have you had occasion time and again to see the entire Dallas delegation working to help whatever problems might need to be worked on at the time insofar as the black and white communities concerned?

A Mr. Luna, I have been quoted publicly in the paper and have said on numerous occasions that I think Dallas County has had an effective urban delegation, legislative delegation, because they have worked together; there has not been as much political infighting within the framework of the delegation as in other urban delegations.

Q They have cooperated and have had really a lot of teamwork, have they not?

A That's true.

Q We have single member districts, of course, in the senate in Dallas County, do we not, Mr. Barnes?

1 A Yes, that's true.

2 Q And while we talk about dividing into single member
3 districts might give black representation, let me
4 ask you, first of all, do you remember when all of
5 Dallas County was a senatorial district?

6 A Yes, I remember that.

7 Q And a white senator then represented Dallas County.
8 Is that right?

9 A That's true.

10 Q Then it was divided into single member districts, is
11 that right, sir?

12 A That's true.

13 Q Did we get a black?

14 A No, sir.

15 Q Are all three of the members of the senate that
16 are wholly within Dallas County at this time white?

17 A Yes, sir.

18 Q And then the one who represents a portion of Dallas
19 County and another county is also white, is that
20 right?

21 A That's correct.

22 Q I believe that's all, Governor. Thank you, sir.

23 Oh, I do have two more question -- one or two or three
24 more I want to ask you. First, are you aware in
25 Dallas County that the City of Dallas elects its

city councilmen at large?

A Yes, I am aware of that.

Q And that the school district, Dallas Independent School District, elects its members at large?

A Yes, I am aware of that.

Q And are you also aware that both the criminal and civil district judges in the judicial districts are elected at large in Dallas County?

A Yes, I am aware of that.

Q And that is true in all other counties that have enough population for more than one judicial district, is it not, sir?

A Yes, I am aware of that.

MR. LUNA: Thank you.

REDIRECT EXAMINATION

Questions by Mr. Cunningham:

Q Governor, did you know that the filing fee for a criminal district judge or a civil district judge is six thousand dollars?

A I wasn't aware of the specific amount, but I am aware that it is--

Q And that this is only a filing fee and after that, you have to pay the expenses of running, are you aware of that?

1 A Yes, I am aware of that.

2 Q And to correct something that Mr. Luna said, that
3 Councilman George Allen did not receive the highest
4 number of votes, but that Councilwoman Anita Mar-
5 times received the highest. Did you know that, sir?

6 A No, I did not.

7 Q Okay. Also did you know that Councilman George Allen
8 had the most seniority then any other member of the
9 Council, and was not elected mayor pro tem -- deputy
10 mayor pro tem -- so, mayor pro tem?

11 A I was aware of that through a newspaper report.

12 Q Okay. Now, and my last question, Governor Barnes:
13 It has been indicated concerning cost and what it
14 would cost for newspaper ad, for advertisement and
15 the radio, TV and newspaper. If a black was running
16 from a single member district composed of blacks,
17 would he need as much money to run in that district,
18 would he need as much radio or TV coverage to run
19 in that single member district which is composed of
20 blacks, than he would if he ran countywide?

21 A Well, you are asking me to make an interpretation
22 based on what kind of campaign he ran. If he used the
23 radio and television it would be -- I can see where
24 Mr. Luna's point of it would be just as expensive to
25 buy an ad in the Dallas Morning News or on WFAA, if

you were going to use it. If you got out and knocked on doors, it would be cheaper.

Q Well, are you aware that there are some weekly black publications in Dallas where the advertisement is not expensive as in the daily newspaper, and he could use these forms of -- this media?

A Yes, I am aware of that.

Questions by Mr. Steele:

Q Just a few more questions that were brought to mind by Mr. Luna. You pointed out there that Mr. Ian Holmes is a representative who is a very good representative of all of Dallas County, and you note, of course, that Mr. Holmes is one black elected official of a racial grouping that composes 25 per cent of the 844,000 we just noted in the City of Dallas.

A Yes.

Q Did you also know that Mr. Holmes was the candidate picked to run, he was on the slate, on the ticket, as it is called in Dallas County?

A I am not too sure--

Q And that the reason--

A ---that I knew of that.

Q And that the reason he is the elected official from Dallas County to the House of Representatives is

because of the fact that he ran on the ticket and was picked to run?

A I didn't know that he was picked to run. I know that after you got the nomination he was on the slate, and I am not going to dispute your word. I didn't know whether he was picked or not.

Q All right. Another point brought to mind, that being that Mr. George Allen serves on the city council there. Let me reiterate, as Mr. Cunningham just did, that Mr. Allen was the person to whom ordinarily the mayor pro temship would fall; were you not aware of that?

A No, I was not aware of that. I read the newspaper article where Councilman Weber nominated him and didn't get the votes.

Q The history of the Dallas City Council would show that anyone in the position he was in at the time would be elected mayor pro tem; the first time in the history of the Dallas City Council a person in that position was not elected to the mayor pro temship and he, a black man, happened to be it.

Another thing brought to mind was the Spence community situation where for the first time in Texas history the Texas Highway Department was going to build a highway over a black residential

community area. It was not because of any teamwork on the part of any representatives from Dallas County that the highway was brought to the ground. It may have been due to certain efforts of the teamwork of the black-elected officials, Dr. Conrad, Mr. Allen and Mr. Holmes, and the fact that there was a lot of community disturbance to the effect that the highway might be blown down or something to that effect. Were you aware of this?

A I remember hearing about the problem, and I knew a lot of people in Dallas were concerned about it. I did not in my answer to Mr. Luna intend to give anybody credit for it or not credit for it. I just know that the legislative delegation both in the House and Senate were concerned about it.

MR. STEELE: All right. No further questions.

Questions by Mr. Richards:

Q Governor Barnes, I take it that we are not to assume that you consider twenty-two hundred dollars to be a reasonable estimate of cost of conducting a county-wide--

A No.

Q --fight for the Texas Legislature in Dallas County,

Q Now, is it a reasonable cost for even running in a

A No, it's not a reasonable cost for even running in a rural district.

Q Have you or your staff made a calculation in terms of what expenditures are necessary to achieve reasonable vote recognition in an urban county in Texas, just the cost?

A No, I really haven't, nor do I know of any study of this type. I would say that it costs -- to my knowledge, it costs more to run in an urban area, though, than it does in a rural area. There is no doubt about it.

Q I am not sure how much you want us to assume regarding your familiarity with Dallas County politics, but let us ask you this question.

A I have gotten a pretty good education today.

Q Are you aware of an organization known as the Dallas -- I believe it is called the Dallas Committee for Responsible Government.

A Yes, I am. I believe it is the initials of the Dallas Committee for Responsible Government.

Q The DCRG, I believe, is the initials of the Dallas Committee for Responsible Government.

A Yes, I am familiar with it.

Q Are you aware of the thirteen legislators, thirteen of the fifteen legislators presently serving in the Texas House from Dallas, who sponsored in the

Democratic Primary by the DCRG in 1968, I guess -- '70? When is the primary?

A Seventy. You didn't mention a primary in '68.

Q 1970 primary? Is that the one you're talking about?

A I was familiar that that organization you are speaking of didn't endorse Dick Reed; I don't know who the other one was -- I don't know who the other one was.

Q Fred Agnich, is that the one you're talking about?

A -- Fred Agnich. You had me lost on the two, I don't know.

Q But other than Reed and Agnich, that organization --

A Yes. I don't know who the other one was.

Q -- had run, in effect, the primary campaign of the other -- the Democratic Primary campaign of the other thirteen Dallas County legislators, is that correct?

A That's correct.

MR. RICHARDS: Thank you; that's all I have.

THE STATE OF TEXAS I
COUNTY OF TRAVIS I

Subscribed and sworn to before me, the undersigned authority, on this ____ day of 1972.

Notary Public, Travis County, Texas

THE STATE OF TEXAS: [I am not an attorney or counsel]
COUNTY OF TRAVIS: I, _____

I, Opal Locke, a Notary Public duly commissioned and qualified in and for the County of Travis, State of Texas, do hereby certify that pursuant to notice issued and the agreement hereto set out, there came before me on the 29th day of December, 1971, at 11:00 o'clock A.M., at the Supreme Court Building, in the City of Austin, Travis County, Texas, Ben Barnes, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause, that he was thereupon carefully examined upon his oath and his examination reduced to writing by me and under my supervision, and that the deposition is a true record of the testimony given by the witness, as shown by my shorthand notes.

I further certify that I am neither attorney or counsel for nor related to or employed by, any of the parties to the action in which this deposition is taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

In witness whereof, I have set my hand and affix my notarial seal this _____ day of January, 1972.

Opal Locke, Notary Public, Travis County, Texas

WITNESSED my hand and seal this _____ day of _____ 1972

1. The first of these is

2. The second of these is

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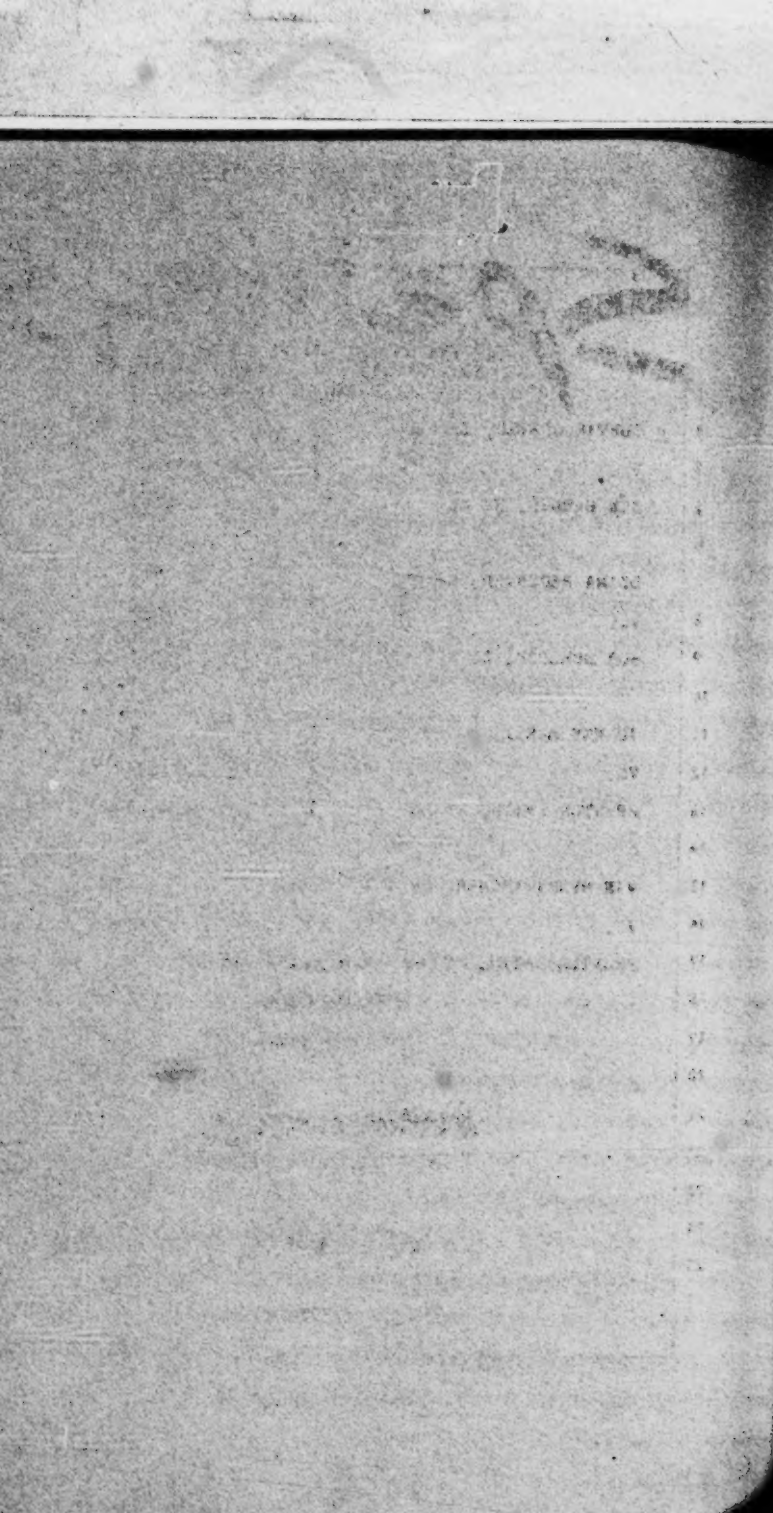
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Spelling's

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL

VS.

CIVIL ACTION

BEN BARNES, ET AL

NO. A-71-CA-142

DIANA REDESTER, ET AL

VS.

CIVIL ACTION

BOB BULLOCK, ET AL

NO. A-71-CA-143

JOHNNY MARRIOTT, ET AL

VS.

CIVIL ACTION

PRESTON SMITH, ET AL

NO. A-71-CA-144

VAN HENRY ANCHER, JR.

VS.

NO. A-71-CA-145

PRESTON SMITH, ET AL

ORAL DEPOSITION OF

ROBERT SPELLING'S

MARIE L. KING

COUNTY REPORTER
212 COUNTY COURT HOUSE
AUSTIN, TEXAS
PHONE BR 2-5112

APPEARANCES:

ROBERT W. GREENBERG Dallas, Texas

FOR PLAINTIFF HARRIOTT.

ED EMM, JR. San Antonio, Texas

FOR INTERVENORS IN THE TYLER CASE.

EARL LUNA Dallas, Texas

FOR DEFENDANT ORR.

HICKEY McGUIRE San Antonio, Texas

NATHAN W. RASCH San Antonio, Texas

FOR PLAINTIFFS ARCHER, ET AL.

WALTER IRVIN Dallas, Texas

OLDO STEIN Dallas, Texas

**FOR PLAINTIFF INTERVENORS WASHINGTON, ET AL,
IN THE TYLER CASE.**

E. BRICE CUMMINGS Dallas, Texas

FOR INTERVENORS CONRAD, ET AL.

STUART HELKIN Houston, Texas

FOR PLAINTIFF GRAVES.

SAM McDANIEL & LEWIS JONES Assistant Attorney
General

FOR THE DEFENDANTS.

Austin, Texas

December 30, 1971

DEPOSITION OF ROBERT SPELLINGS, a witness
of lawful age, taken on behalf of the Plaintiffs,
Diana Register, et al, in the above entitled
causes, pending in the District Court of the United
States for the Western District of Texas, Austin
Division, pursuant to the notice heretofore issued
and the agreement hereinafter set out, before Marie
L. King, a notary public in and for Travis County,
Texas, at the Supreme Court Building, in the City of
Austin, Travis County, Texas, on the 30th day of
December, 1971.

(Deposition taken according
to stipulations entered into
at the time of the taking
of the deposition of
Crawford Martin, which are
as follows:

MR. RICHARDS: Do you want to consider,
Sam, that this is taken by -- I guess it is taken
pursuant to notice; inasmuch as General Martin is a
defendant, do you -- he is a defendant in some of the
cases?

GENERAL MARTIN: I am a defendant in some,
and not in some of the others.

MR. RICHARDS: I didn't know whether Sam
wanted to treat it just by notice, or how you wanted it.

MR. McDANIEL: I have no objection to treating it as if it were taken by notice, and my only thing is, I do want -- I am not going to waive signature on them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And so we -- do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be absent in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master, is that correct, without proving General Martin's unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present General Martin's testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness?

MR. McDANIEL: That is correct. That is correct.

1 MR. LUNA: For the State Chairman, we do
2 not waive our right to cross-examine him at the trial,
3 and in the event he should not be available at trial,
4 we do not then waive the use of this -- if he is
5 available, but is not placed on the witness stand, we
6 don't waive our right to cross-examine him at the
7 trial.

8 MR. RICHARDS: Well, let me be sure I under-
9 stand. Suppose that General Martin is not called as
10 a witness at the time of trial, what is your position
11 with respect to the use of this deposition at the
12 time of trial?

13 MR. LUNA: I reserve the right to examine
14 him in person.

15 MR. RICHARDS: Well, then, at least you are
16 on notice from me that it is going to be my position
17 that if you have questions to ask General Martin, you
18 had better ask them today, because I will intend to
19 offer this deposition as evidence at the time of
20 trial, and you are here pursuant to notice, and at
21 least you have the opportunity to examine him, and it
22 will be my position, if you don't afford yourself that
23 opportunity today, that we will offer the deposition
24 as first-hand testimony.

25 MR. LUNA: I understand.

1 MR. JENNINGS: ALL RIGHT, THANKS.
 2 MR. JENNINGS: I may ask the same question today,
 3 but I am simply asking you if by virtue of
 4 participating in this deposition that I don't have
 5 any liability to this company.
 6 MR. JENNINGS: Is there anyone else who
 7 has got a position, attorneys who are present who
 8 want to put up position or record in this case?
 9 MR. JENNINGS: I am not sure, but I am not sure.
 10 MR. JENNINGS: I am not sure, but I am not sure.
 11 MR. JENNINGS: I am not sure, but I am not sure.
 12 A witness named in the notice heretofore issued,
 13 before first jury, were in the above name, testified
 14 on his oath as follows:

15 EXAMINATION

16 Question by Mr. Jennings:

17 Q. Would you state your name, please?

18 A. Robert Jennings.

19 Q. My name is Robert Jennings, and I represent the
 20 plaintiffs heretofore and others in the lawsuit from
 21 Hilling, attacking the House reorganizing. Necessarily,
 22 my questions will relate in the main to the House
 23 plans. Mr. Jennings, by what are you employed at
 24 the present time?

25 A. The Lieutenant Governor.

Q: How long have you been working for the Lieutenant Governor?

A: Oh, about five and a half years.

Q: Now, do you have an official title, Mr. Spellings?

A: Yes, sir.

Q: What is that title?

A: I am Executive Assistant.

Q: Did you hold that office all during the calendar year 1971?

A: Yes, sir.

Q: Mr. Spellings, were you consulted by the Lieutenant Governor after the creation of the Legislative Redistricting Board in the drawing of maps or plans relating to House districts?

A: Yes, sir.

Q: And were you consulted by any other members of the Redistricting Board?

A: Yes, sir.

Q: And who would they have been?

A: The Attorney General, the Land Commissioner, the Speaker of the House, and the Comptroller.

Q: Now, are you testifying that you had conversations about House plans with each of these individuals?

A: Yes, sir, I did.

Q: All right. Now, would it be a fair statement to say

that some of these conversations took place immediately before, during or after public meetings of the Board, as well as conversations taking place without respect to any Board meetings?

A Yes, sir, I think that's a fair statement.

Q All right. Did you ever attend a meeting of the Legislative Redistricting Board when it was a closed meeting?

A Yes, sir.

Q How many?

A Only one.

Q And do you know what the purpose of that closed meeting was?

A Yes, sir.

Q What was that?

A It was to discuss the legal procedure that the Board was going to follow or was going to attempt to follow with regard to the mandamus action that had been filed in the Supreme Court.

Q All right, are you an attorney?

A Yes, sir.

Q And licensed to practice in the State of Texas?

A Yes, sir.

Q All right, sir. Can you tell us when -- strike that. Did you ever prepare a map or a plan, or did you ever

instruct anyone to prepare a map or plan laying out House Districts in the State?

A Yes, sir.

Q All right. Let's go back to the first time -- did you actually prepare any?

A Yes, sir.

Q When did you do that -- approximately, if you know?

A Well, it was on Tuesday preceding the meeting of the Board on Friday, I believe, when the Board formally

adopted the plan on the House redistricting.

Q All right. The first time you ever prepared a plan was the Tuesday before the Friday of the adoption of the plan?

A Yes, sir, -- for the House?

Q Yes.

A Yes, sir.

Q Okay. At whose direction did you prepare that plan?

A The Lieutenant Governor's.

Q Did the Lieutenant Governor tell you, "Now, Bob, I want you to draw a House plan, and I want you to put so many people in this District, and draw this District this way," or what did he tell you?

A Told me to draw a plan.

Q Did he give you any guidance as to how to draw the plan?

A Yes, sir, he did.

Q All right. Can you tell us -- did he give you guidelines to use, or was he more specific?

A The only guidelines that he gave me were in response to a question -- in response to questions that I specifically asked him. I asked him whether or not we were going to use single member districts in the urban areas, and he told me, "No, only in Harris County."

Q Now, did you understand his request to you on this Tuesday as a request from a member of the Board, or was he acting on behalf of a majority of the Board -- if you know?

A Well, it would be sheer speculation on my part; I assume that -- he was in constant contact with other members of the Board -- I assume -- of course, he is my immediate employer, but I assume that the request was done in his capacity as a member of the Redistricting Board.

Q Getting aside just a moment, did any other member of the Redistricting Board ever ask you to draw a plan for the House Districts?

A Not to my recollection.

Q Okay. Now, you stated that -- if I am correct, and if I am not, please correct me, sir -- that the

Lieutenant Governor called you in and asked you to prepare a plan for the House of Representatives, and one of the things before you prepared the plan that you asked him was whether you should prepare single member or multi-member districts in the metropolitan area. Did you ask him any other specific questions to which he gave specific responses?

A Well, you have to understand that I am in constant contact with the Lieutenant Governor, so I cannot recall any other specifics. I think there were -- I had in my -- I think the primary thing the Lieutenant Governor wanted done was to draw the most constitutional map that we could.

Now, I had my own opinions as to how that could be carried out, and I think he relied on me with regard to those opinions, and I didn't -- other than the single member district question, I can't recall getting into any other specifics with him.

Q All right. You have indicated that you felt the Lieutenant Governor wanted you to draw a constitutional plan. You have testified that you are a lawyer; you are obviously -- or are you familiar with the series of redistricting cases that the Supreme Court of Texas and the Supreme Court of the United States has ruled on?

1 A Yes, sir.

2 Q And have you read these opinions?

3 A Well, I can't say that I have read all of them; I
4 have read a great many opinions.

5 Q All right. Based on your viewing of this map that --
6 the first map, the one that you drew -- what consti-
7 tutional guidelines, whether you were instructed to
8 follow them or not, did you actually follow or attempt
9 to follow?

10 A Well, of course even if these guidelines are subject
11 to individual interpretation, and the reason --

12 Q Right, I see --

13 A -- a man will differ -- or we wouldn't have this
14 lawsuit.

15 Q Maybe I can get more specific. Did you use as one
16 criteria equal population districts?

17 A Yes, sir.

18 Q Compactness of districts? A member of the legis-

19 lature, I think so.

20 Q Was it your attempt to draw districts where there was
21 no dilution of minority votes or wishes of minorities,
22 whether they be political, ethnic or racial?

23 A Yes, sir.

24 Q All right. Now, in order to draw this map in re-
25 sponse to the request of the Lieutenant Governor,

1 what information did you use; that is, did you use
2 census tract information?

3 A Yes, sir.

4 Q Did you use any Department of Commerce Bureau of
5 Census Reports on Location of Concentrations of Blacks
6 or Mexican Americans?

7 A Well, I don't know. When I say, "I don't know," the
8 Senate Redistricting Committee had a staff; that
9 staff compiled information over, oh, an eight month
10 period, approximately an eight month period. That
11 information was available to me.

12 Q Well, what I am trying to get at, Mr. Spelling, is that
13 you are sitting in an office and the Lieutenant
14 Governor says, "Draw a House plan," and you deter-
15 mine the single-member - multi-member district
16 problem, and then you got a blank map. Now, what did
17 you use to base your lines?

18 MR. McDANIEL: I think what he is saying,
19 Counselor, is that he is not sure of the sources of
20 information that the Senate Committee used to prepare
21 the information that he used.

22 A That's exactly right.

23 Q In other words, are you saying that you got -- you
24 didn't go to the original source material?

25 A No, sir.

Q Like census tracts?

A Well, I had census tract maps.

Q All right. Did you also have the information regarding concentrations of blacks or Mexican Americans around the state?

A I did not have any such information in front of me when I drew the map.

Q Okay.

A I think, because of the work that I did on redistricting over an eight month period of time, that I knew generally with regard to some areas where there might be concentration of blacks or Mexican Americans.

Q Mr. Spellings, the request from the Lieutenant Governor to draw a House map, this wasn't your first acquaintance with redistricting House or Senate, was it -- you have been involved --

A With what regard are you using the word "acquaintance-ship"?

Q Well, you have been involved in the Legislature's work on redistricting for some period of time, haven't you?

A Well, I was exposed to it during the legislative session, I did not do any actual work during the Legislature. My work was primarily -- my direct involvement was after the Legislature adjourned and

1 it was determined that the Legislative Redistricting
2 Board was going to draw both the House and the Senate
3 map, and of course the House map wasn't determined
4 until after the lawsuit.

5 Q All right. Now, in response to this request by
6 Lieutenant Governor Barnes, did you draw the map?

7 A Yes, sir.

8 Q All right; state-wide?

9 A Yes, sir.

10 Q What did you do with it; who did you physically give
11 it to after you finished -- if you recall?

12 A Well, if I appear to be slow, let me say that this
13 was a very trying period of time, that particular
14 three or four day period; as I recall, I believe that
15 I made copies of the map and gave it to some staff
16 people in the Attorney General's office.

17 Q Was the map that you drew the eventual map that was
18 adopted by the Redistricting Board?

19 A That particular map was not,

20 Q Did you draw a subsequent map?

21 A Yes, sir.

22 Q And when did you draw that?

23 A Let's see; I think it was Thursday afternoon.

24 Q At whose request?

25 A Well, actually at no one's request. I was notified

by the Legislative Council that the one that I had drawn had 131 districts in it; so, therefore, when I received a call from Ben Johnson, the minute I hung up the phone, I came in my office and I knew exactly where I had made my error, and it took me about an hour or an hour and a half to correct my mistake.

Q You didn't need the Lieutenant Governor or any member of the Redistricting Board to tell you that there were 130 members, rather than 131, and as an attorney and as an assistant to the Lieutenant Governor, you knew what to do once you found out you had one extra district?

A Certainly.

Q Is that what you are saying?

A Sure.

Q Okay. Now, can we basically say that, with the elimination of one legislative district, the map was basically the same?

A Yes, sir.

Q Or did it change drastically?

A It resulted in one pairing that was not in the 131 district, but I would say basically, oh, roughly 70 percent of the map was the same, or maybe more -- 75 or 80 percent of the map was the same.

Q Now, were the districts, the single-member districts,

that you had drawn on Tuesday, ---

A Uh-uh, approximately when you told me that, sir?

Q --- changed any?

A No, sir; I did not draw the single-member districts on Tuesday.

Q Well, whenever you drew it, in response to a request on Tuesday?

A Yes, sir.

Q Now, were the multi-member districts in the metropolitan areas other than Harris County changed?

A Yes, sir; Bexar County.

Q Bexar County was changed?

A Yes, sir.

Q Can you tell us generally in what respect?

A Well, -- not that I think it is very important, but that's not my judgment -- with regard to the 191st map, some census tracts were taken out of South Bexar County to put into a -- to round out another legislative district, and the map that was eventually drawn, the change I made, took some census tracts out of North Bexar County that went into another legislative district.

Q But the basic idea of multi-member districts in the metropolitan areas other than Harris had not been changed?

1 A Yes, sir, that is correct.

2 Q All right. Now, after you made the changes and came
3 up -- when did you come up with the finished map,
4 Thursday evening? I said and would you sign it?

5 A Yes, sir.

6 Q Now, to whom did you -- did you also make copies of
7 that and deliver it to the Attorney General's staff?

8 A Yes, sir.

9 Q Did you deliver it to anybody else?
10 A No, sir; oh, yes, sir, I did, to Bob Johnson in the
11 Legislative Council. The Council was checking up
12 work and really preparing the finished product.

13 Q And that plan that you finished, say, late in the day
14 Thursday, was the plan that became the official
15 action of the majority of the Board the next day,
16 insofar as the House is concerned?

17 A Yes, sir, in the sense that it was the official
18 action of the House.

19 Q Did you ever meet with the Speaker with regard to
20 drawing the House districts, and I ask you that par-
21 ticularly with reference to whether or not metro-
22 politan areas other than Davis would be single or
23 multi-member districts?

24 A I don't believe I understand your question.

25 Q Did you ever have any discussion with the Speaker
concerning whether or not metropolitan areas in his

view should be multi-member, single-member, or something in between?

A Not to my recollection. I talked to the Speaker several times, but I can't recall having that discussion with him.

Q The same question with regard to each of the other Board Members?

A I discussed it with Bob Armstrong.

Q And what was his reaction, if any; did he give you some advice as to how he would like it?

A Oh, I think it is public record that Commissioner Armstrong favors single-member districts.

Q Well, that may be, Mr. Spellings, but I mean did he ---

A He did tell me that he favored single-member districts,

but he realized the problems we faced with regard to the situation as it existed at that time.

Q You are referring to time limitation?

A There were time limitations and, frankly, I don't think there were the votes on the Board for single-member districts.

Q Did you take a poll?

A No, sir.

Q Of course, in your daily contact ---

A I am giving you my opinion.

Q I understand. In your daily contact with the

Lieutenant Governor, do you feel this was also his opinion, that there weren't enough votes?

A Yes, sir, I think that was his opinion.

Q Did you discuss single-member or multi-member districts in the metropolitan areas with any other member of the Board, like General Martin or Mr. Calvert?

A I discussed it with General Martin, but only --

General Martin did not give me his opinion one way or another. I expressed my view to General Martin that in the event the Board did decide to draw single-member districts throughout the state, it would be a terrific burden for whoever had the eventual responsibility of drawing the map, from a time standpoint. You understand the Board was under a mandamus order and the time limitation was about to run out.

Q Even in view, Mr. Spellings, of the time problem, do you feel that, had there been enough votes on the Board -- and this is obviously a hypothetical question -- that the staff working together could have come up with single-member districts throughout the state?

A Again this is simply my opinion; I think it would have been practically impossible.

Q Because of the time element?

A Yes, sir.

MR. CANNON: I think that's all. Thank you.

....

CROSS EXAMINATION CONTINUED

Questions by Mr. Idar:

Q Mr. Spellings, my name is Ed Idar, Jr., and I am representing a group of Mexican-Americans in the Tyler case. We are also concerned with the House, so most of my questioning will be directed to that particular issue. How old are you -- I don't know if they asked you that?

A Thirty.

Q And you are an attorney?

A Yes, sir.

Q When did you become licensed to practice?

A I took the Bar in October of '67; I was licensed, I believe, sometime in '68, first part of '68.

Q All right. Did you ever -- were you in private practice before you came on with the Lieutenant Governor, or were you already with the staff, or what?

A I was already with his staff.

Q I see. You never have actually practiced law then?

A Well, I have practiced some law, very limited.

Q Okay. You say you attended one closed meeting of the Board?

A Yes, sir.

Q And this apparently was for the purpose of discussing the legal procedure that the Board was going to take

DEBATE ON THE ACTION OF THE TEXAS SUPREME COURT
pursuant to the unanimous action of the Texas Supreme Court, was this after the Court had issued the mandamus or prior to the action of the Court?

A I don't recall.
Q Do you recall what action the Board took at this particular meeting? Senator Martin?
A No, sir, I don't recall what action -- I don't think they actually took any action; I think they discussed what the situation was.

Q And do you recall how many days this would have been prior to the deadline by which the Board was going to go out of office as an official body, sir?

A No, sir, I do not.

Q Can you estimate the time element -- 20 or 30 days?

A I would -- I really don't know -- my guess would be probably a couple of weeks.

Q Is it my understanding that from the time the Texas Supreme Court set aside the House plan that had been adopted by the Regular Session to the deadline by which the Board, the constitutional deadline by which the Board was going to go out of office, there was approximately 25 days?

A It would be easy to get that information; I don't have it in my head.

MR. McMANIS: Are you particularly wanting

1 to inquire into these things of this witness, or would
2 you like for me to furnish the information which you
3 may be seeking?

4 MR. IDAR: Can we stipulate it was 23 days?

5 MR. McDANIEL: No, but I can tell you what
6 the situation was, if you would like for me to do
7 that, and what the meeting was about and how the
8 deadline came about.

9 MR. IDAR: All right, if you want to. I would
10 like to clear that up.

11 MR. McDANIEL: All right. As you know, the
12 Senate failed to pass a Senate apportionment bill,
13 and the Board came into being and was in existence
14 for the purpose of Senate reapportionment. The suit
15 on House apportionment was decided by the Supreme
16 Court of Texas during this same period of time, and
17 the Supreme Court of Texas held the House bill that
18 the Legislature had passed to be unconstitutional.

19 At that point the Board met over here one
20 morning to decide what position they would take on
21 whether or not to reapportion the House.

22 Now, the question revolved around the fact
23 that the Legislature had acted. There is a case that
24 is cited in the Graddock case from California, in
25 which the California Supreme Court had held in

1 interpreting a constitutional provision very similar
2 to ours that because the California Legislature had
3 acted, although they had acted unconstitutional, that
4 nevertheless the practicing board in California
5 did not have jurisdiction, and it would take a special
6 session of the Legislature to come back in and draw
7 the plan.

8 The board decided that they would refuse
9 to recognize and would precipitate a mandamus suit,
10 so that the Supreme Court of Texas would annul
11 our constitutional provision. The mandamus was
12

13 MR. CHAMBERLAIN: I think all of us are
14 familiar with the case, and also with our
15

16 MR. McANULTY: But he wants to know how --

17 MR. IRAN: I never have got this background
18 firmly in mind.

19 MR. McANULTY: All right. The mandamus
20 action was brought, as you know, and the Supreme
21 Court issued the mandamus.

22 MR. IRAN: Do you know on what date?

23 MR. McANULTY: No, but that's where the 23
24 day limit came from. When the mandamus was issued,
25 ordering the board to recognize the State, they had
26 23 days to go to it.

27 MR. IRAN: All right.

1 **MR. McDAKIEL:** Before they went out of
2 existence.

3 **Q** And it was that meeting that he has spoken about
4 that you attended?

5 **A** Yes, sir.

6 **Q** Okay. Now, you indicated that you prepared a House
7 map on Tuesday preceding the meeting of the Board on
8 Friday when the Board adopted the House Redistricting
9 Bill, the one that was finally adopted?

10 **A** Yes, sir.

11 **Q** I don't have the exact date in here; when was that,
12 October the ---

13 **MR. EASON:** The House?

14 **MR. IDAR:** Yes.

15 **MR. EASON:** October 22.

16 **Q** That's when the House Bill was adopted, October 22?

17 **A** Yes, sir.

18 **Q** And the preceding Tuesday is when you drew up this
19 first map that you told us about?

20 **A** Yes, sir.

21 **Q** At the time that you used that particular map, did
22 you start from scratch, or did you have all the maps
23 already available to you -- I am trying to determine
24 how much of a job you had to do to prepare that map.

25 **A** I started from scratch with a blank map.

1 Q And you had to redistrict the entire state?

2 A Yes, sir.

3 Q I see.

4 A It was difficult.

5 Q Now, I can appreciate that. Now, when did you start
6 that -- you say you finished the map on Tuesday --
7 when did you actually start working on it?

8 A Well, I actually did not finish the map until Wednes-
9 day morning.

10 Q Well, all right.

11 A I started drawing the map -- to the best of my recol-
12 lection, I started drawing around 5:00 o'clock Tues-
13 day afternoon, and I worked from about 5:00 o'clock
14 Tuesday afternoon until about 2:00 o'clock Wednesday
15 morning.

16 Q I see.

17 A And I was beginning to see spots, and called it a
18 spot, and started again; and I actually completed the
19 State Plan on Wednesday morning, and I would just
20 guess it was around 10:00 or 10:30 in the morning.

21 Q What process did you use, the mechanical processes
22 that you actually used -- you say you started with a
23 blank map; did the map have the population figures
24 by counties?

25 A Yes, sir.

1 Q I see. And you just started jiggling around, figuring
2 around -- you know more or less what the size of the
3 individual single-member district should be -- right --
4 by dividing the State into the number of House seats?

5 A Yes, sir, I knew what the exact number was, if you
6 could theoretically draw 150 exact districts.

7 Q Now, you didn't have to concern yourself too much with
8 big decisions, because apparently the decisions had
9 been made that they were going to get outlying multi-
10 member districts, right?

11 A In drawing that map I didn't concern myself at all with
12 the urban areas.

13 Q Okay.

14 A I am sorry; with the exception that there was some
15 surplus in Tarrant County and some surplus in Harris
16 County and some surplus in Bexar County that went
17 into other districts.

18 Q I see. Now, what about Harris County, though; did you
19 draw single-member districts during this 24-hour
20 period, more or less?

21 A No, sir.

22 Q Of Harris County?

23 A No, sir.

24 Q Or did you already have a map for Harris County?

25 A No, sir.

1 Q With the finished product that you finished on Wed-
2 nesday morning, did it contain single-member districts
3 for Harris County?

4 A No, sir.

5 Q Or did it contain the rest of the state?

6 A Yes, sir.

7 Q Well, now, you further testified that after you drew
8 that first plan you made some copies of it and turned
9 it over to a number of people, including the Legis-
10 lative Council.

11 A Yes, sir.

12 Q And then they came back and told you, "Look, you have
13 151 districts," so in an hour and a half you recti-
14 fied that error; are you trying to tell us that at
15 that time you still didn't have a map of Harris
16 County showing single-member districts?

17 A No, sir, I think I did when they caught the error.

18 Q The Harris County map was drawn Wednesday evening, as
19 I recall.

20 Q By you?

21 A Yes, sir.

22 Q So in addition to drawing the rest of the state, you
23 also drew the Harris County map on Wednesday evening?

24 A Yes, sir.

25 Q And there again on Harris County did you start from

1 scratch with a blank map of the city?

2 A Yes, sir.

3 Q Or of the county?

4 A Yes, sir, it was a census tract map with population
5 per census tract.

6 Q All right. So what it boils down to really -- when
7 did you say you started -- on Tuesday -- what hour --
8 on Tuesday morning?

9 A No, Tuesday evening; I would estimate 5:00 o'clock.

10 Q Between 5:00 o'clock on Tuesday afternoon and what
11 time on Wednesday night did you complete your work?

12 A Didn't conclude it Wednesday night; I don't think it
13 was concluded until sometime Thursday.

14 Q All right.

15 A As I recall, the map was not delivered to the Legis-
16 lative Council until Thursday.

17 Q Sometime Thursday morning?

18 A I think it was -- early afternoon, as I recall.

19 Q Okay. So between approximately Tuesday afternoon at
20 5:00 p.m. until Thursday early afternoon, you re-
21 districted the entire state including Harris County
22 with single-member districts, starting from scratch?

23 A Yes, sir.

24 Q Did you have any help in doing this work?

25 A Yes, sir.

1 Q How many people helped you?

2 A Well, when you say "help" -- you know, if I had some
3 questions about a particular area, you know, I could
4 pick up the phone and call whoever I wanted to get
5 the question from, but the actual physical help, I
6 really only had one person.

7 Q Well, that's what I was trying to get at, the actual
8 help that you had in looking at each county and looking
9 at the census tracts, and in figuring out where
10 to draw your lines for the different districts, that's
11 what I had in mind. You and one other person did
12 all this work during the time we indicated, is that
13 correct?

14 A Well, I would say me and one other person did the
15 bulk of the work.

16 Q Well, now then --

17 A You understand there was a full staff of the Legisla-
18 tive Council working on the map also.

19 Q But you have told us that you did most of the work,
20 starting with a blank map.

21 A Yes, sir.

22 Q And you did have the help of another person?

23 A Yes, sir.

24 Q Did you farm out some of this to the Legislative
25 Council; did you call them and tell them, "Look, why

1 don't you draw the districts in the western part of
2 the state," and call somebody else and tell them, "Will
3 you draw the districts in the northern part of the
4 state for me?"

5 A No, sir, I did not do that.

6 Q So that actually you and this other person basically
7 did ----

8 A Well, I will give you an example: In Taylor County,
9 where Abilene is, you had enough population in Taylor
10 County for one legislative district; there was a
11 surplus that was going to go with three other counties.

12 Q Yes.

13 A Now, there was obviously a decision to be made about
14 how Taylor County is going to be divided or split.

15 With regard to that particular county, I asked the
16 Legislative Council, in the map that was passed by the
17 House and the Legislature, I asked them how they did
18 it there, and I got them to pull it out and we looked
19 at it, and I said, "It looks very good to me; it
20 looks fine." They created a core district that was
21 compact, so I told Johnny Potter to use that. I ac-
22 tually didn't draw the lines in Taylor County.

23 Q In other words, you relied on work that had been done
24 previously by the Council ----

25 A With regard to that particular instance, yes, sir, I

1 did.

2 Q All right. On how many other instances -- I realize
3 I may be pressing your memory too much -- the best
4 you can answer us, how much of this type of help did
5 you get from the Legislative Council? How many other
6 districts did you have to call them about and have
7 them give you some guidance based on prior data they
8 had already gathered or maps they had already drawn?

9 A Well, I think probably I discussed most of the areas
10 where a county had enough for one district and the
11 surplus had to go some place else.

12 Q All right. So with that kind of help then, which
13 was readily available through the Legislative Council
14 and their staff, you were able to do this job from
15 about 5:00 o'clock on Tuesday afternoon until sometime
16 early afternoon of the following Thursday?

17 A I think that's a fair statement.

18 Q Just a little less than 48 hours, right?

19 A Well, no, I would not say that's fair, because the
20 Council -- the actual physical preparation of the
21 bill itself, the Board did not adopt the map until
22 4:00 o'clock Friday afternoon, and you would have to
23 ask Bob Johnson at what exact time it was actually
24 ready. It's my recollection that the thing was totally
25 completed about 2:30 Friday afternoon.

1 Q Yeah.

2 A About an hour and a half before the Board actually
3 met.

4 Q Okay. I was simply talking about the fact that once
5 the map was drawn, the only job that was left, you had
6 to go ahead and number the districts and list the
7 counties in each district, for example; or in Harris
8 County you had to lay out the census tracts that were
9 going to go into the single-member district set.

10 A Well, of course you would have to check with the
11 Legislative Council, but I think it involved a little
12 bit more than that. They would have to check, for
13 example, the population in every instance. We wanted
14 to be extremely sure that we didn't make any mistakes
15 and leave anybody out.

16 Q So we will then consider that the additional time ele-
17 ment which ran from on or about early afternoon on
18 Thursday when you completed your work to on or about
19 4:00 o'clock on Friday when the Board finally adopted
20 your plan. So we have another 24 hours; roughly,
21 about three days all told. All right; so that then,
22 assuming that the Board -- this is going to be a
23 hypothetical question -- assuming that the Board on,
24 say, some six or eight -- let's say some eight or
25 nine days prior to the deadline had decided to give

1 the major cities single-member districts, that would
2 have allowed another three or four days to do the
3 necessary work to do that, wouldn't it have?

4 A Mr. Icar, the House map was not the only thing that
5 they had to do. The Senate map was not adopted until
6 one week before the House map.

7 Q All right.

8 A So there was considerable work with regard to the
9 Senate map, and I think the feeling of the Board was
10 that they wanted to finish the Senate map before they
11 started working on the House map.

12 Q Well, okay. Let me go on to something else. Now,
13 you say it was Governor Barnes that told you to draw
14 the House plan?

15 A Yes, sir.

16 Q The one we are talking about that you started on on
17 Tuesday?

18 A Yes, sir.

19 Q And that he didn't actually give you any guidelines;
20 the only guidelines you obtained were simply answers
21 to questions you raised at the time he gave you this
22 job to do? For example, you say you asked him
23 whether or not the metropolitan areas were going to
24 get single-member districts, and he told you, "No,
25 the only one would be Harris County?"

1 A I believe that's the only specific question I asked
2 him, -- as I recall -- there may have been others;
3 as I said before, there was a lot going on, and I have
4 constant contact with the Lieutenant Governor.

5 Q Now, you further indicated that you assumed when he
6 told you that only Harris County would have single-
7 member districts -- of course you don't know, -- of
8 course you are speculating on whether he was speaking
9 for the Board or not; that you interpreted this re-
10 quest to come from him in his own capacity as a member
11 of the Board?

12 A Well, I will stand on what I said before.

13 Q Well, is that correct?

14 A Yes, sir, I think so.

15 Q All right. But you did not inquire from any other
16 Board member as to what their attitude was as to
17 single-member versus multi-member for the major
18 metropolitan areas apart from Harris County?

19 A Well, as I testified before, I talked to Commissioner
20 Armstrong, who happens to be a good personal friend
21 of mine, and we discussed it at length. I don't
22 believe I asked his opinion, because I knew his
23 opinion.

24 Q Did you know whether Mr. Martin had made up his mind
25 at that point?

1 A I never discussed it -- to the best of my recollection,
2 I never asked General Martin, and General Martin
3 never volunteered to me his opinion one way or
4 another.

5 Q Okay.

6 A Again I would like to point out that it was at least
7 assumed, and I think I was right in assuming that
8 the Board members were in contact with each other, and
9 I was certainly not privy to all the conversations
10 that the Board members had.

11 Q Besides the one closed meeting of the Board, did you
12 attend the several public meetings that they had --
13 I believe they had about four public meetings?

14 A I was not there throughout the entirety of all meetings.
15 I stayed through the entirety of the meeting in which
16 they adopted the Senate map, and the same with the
17 House map. I was shortly at the other meetings with
18 the exception that I did not go to the meeting where
19 the Lieutenant Governor was not there; I did not go.
20 I say I did not go -- I stuck my head in the door
21 and then left.

22 Q So then of your own knowledge, you don't have any
23 information as to what point of time the Board --
24 I say Board -- officially decided that the metropoli-
25 tan areas aside from Harris were going to get

1 multi-member districts?

2 A I do not know that.

3 Q If a decision was made, it might have been made be-
4 tween themselves, talking to one another privately;
5 would that be a fair assumption?

6 A Well, I just don't know; it could have been over the
7 telephone, or ----

8 Q All right. Incidentally, after you finished -- let
9 me see; you said you finished -- after you corrected
10 the map, because you started out with 151 districts,
11 and you corrected it -- I don't recall when -- you say
12 you did that on Wednesday night, was it?

13 A Let's see; Tuesday -- I believe it was Wednesday
14 evening.

15 Q Wednesday evening?

16 A I would say Wednesday evening, yes, sir.

17 Q Was that after you had made that correction?

18 A No; it must have been Thursday; it was Thursday
19 evening -- Thursday evening is when I did it.

20 Q And then the copies of this map were made available
21 to the Board on Friday?

22 A No, sir, I think they were made available that
23 evening.

24 Q Did you make them available?

25 A I supplied them to some staff people from the Attorney

General's office.

Q How about Mr. Culvert and Mr. Armstrong?

A I was told that the staff people from the Attorney General's office were going personally and individually to see the two Board members.

Q Then the Board met on Friday and adopted it?

A Yes, sir.

Q You indicated that -- when you were asked what constitutional guidelines you followed, you indicated that you used, tried to set up people by population districts by compactness and no dilution of minority votes. Now, what steps did you take in drafting the plan you drafted as to the House to insure there was no dilution of minority votes -- by "minority" I refer specifically to blacks and Mexican Americans, for example.

A Well, I believe you would have to get a little more specific in your question.

Q Well, let's take Jefferson County. Jefferson County is one county that has a rather odd shape, as a result from evidently your records in adjusting this plan. And you know there are concentrations of black population in Jefferson County. After you came up with the plan for Jefferson County, either by yourself or with the help of the Legislative Council, did you sit

1 back and take a look at it, and assess what the
2 situation was going to be, what effect it was going to
3 have on the black population in Jefferson County?

4 A Well, I don't understand how I could make that
5 determination.

6 Q Well, didn't you, to begin with, try to ascertain in
7 what portion, geographical portion, of Jefferson
8 County your black population was concentrated in?

9 A As I recall, there are two at-large members in Jeffer-
10 son County.

11 Q Yeah, but a portion of the county was cut out and
12 assigned to Orange.

13 A Yes, sir, and I relied on the Council with regard to
14 the census tracts that were I think added to Orange
15 County, and I think some of them went up north, as
16 I recall.

17 Q Okay; but after the work was completed, like I said,
18 between you and the Council, and you took a portion
19 of Jefferson and assigned it to Orange County, for
20 example, ----

21 A I did not do that; let me say that.

22 Q Did you ask -- did you discuss specifically this parti-
23 cular program with the people in the Legislative
24 Council that you were dealing with?

25 A Well, I think you are assuming that there is a problem;

1 I don't see any problem.

2 Q So you did not raise this question then, because in
3 your view there was no problem? I am not trying to
4 confuse you; I just want to know what you did, raised
5 it, or ---

6 A I am trying to tell you what I did. To my recollection,
7 I don't recall discussing the black population in
8 Jefferson County.

9 Q Okay.

10 A But, like I say, I relied on the Legislative Council
11 with regard to how Jefferson County was divided.

12 Q Do you recall having any specific discussions with
13 the Lieutenant Governor, or with any member of the
14 Board, or with any member of the staff, whether it be
15 the Attorney General or the Legislative Council staff,
16 as to the overall problem of - constitutional problem -
17 that you need to insure that there is no dilution of
18 minority vote, voting strength, when you are drafting
19 a redistricting plan -- did you have any specific
20 discussions on this point?

21 A Yes, sir, I did.

22 Q With whom?

23 A The Lieutenant Governor.

24 Q And what was it ---

25 A Specifically with regard to Harris County.

1 Q Aside from Harris County, did you discuss any other
2 area with him?

3 A Well, I certainly may have. I cannot recall a speci-
4 fic right now, a specific other than Harris County.
5 I knew the Lieutenant Governor, and I believe the
6 other four members of the Board were interested in
7 drawing the fairest map possible.

8 Q Did the Board at any time, again for the purpose of
9 making the policy decision whether to go single-member
10 or multi-member in the other metropolitan areas ex-
11 cept Harris County, did the Board or any member of
12 that Board ever ask you to assist, say the voting
13 patterns in these different areas -- how particular
14 areas of the city, say an area populated by blacks,
15 might have voted in the past, when they might have
16 had, say, a black running against a white?

17 A Did any member of the Board ever ask me that -- no, sir,
18 they did not, to my knowledge -- my recollection, they
19 did not.

20 Q Did any member of the Board, or any member of the
21 Legislative Council staff, or any member of the
22 Attorney General's staff ever ask you to do any work
23 along these lines?

24 A No, sir, they did not.

25 Q Did Mr. Hooser work under your guidance?

1 A Yes, sir.

2 Q Do you know whether he had maps and other data re-
3 lating to voting patterns in a number of areas through-
4 out the state?

5 A Yes, sir.

6 Q Well, was that information ever used by yourself?

7 A The only information that I had when I actually drew
8 the map was with regard to the black population in
9 Harris County.

10 Q And that particular county was given single-member
11 districts?

12 A Yes, sir.

13 Q I am trying ---

14 A There was -- the Redistricting Committee and the
15 staff put together an amazing amount of data that
16 would have been available to me if I had wanted it.
17 I just did not use any of that particular data with
18 the exception, as I recall, with regard to the Harris
19 County situation.

20 Q Okay. Would it be a fair statement, based on all of
21 the discussions that you had with the Lieutenant
22 Governor, and with Mr. Martin, and with Mr. Johnson,
23 and other members of the Legislative Council staff
24 and the staff of the Attorney General's office, you
25 know during all this period of time as best you can

1 recall when you all were talking about redistricting,
2 would it be a fair statement to say that everybody
3 just simply assumed that the existing situation in the
4 larger counties aside from Harris which had multi-
5 member districts really created no problem as far
6 as the black or Mexican-American minorities about
7 which you all needed to be concerned?

8 MR. LUNA: We object to that and will object
9 when this case goes to trial to that question and his
10 answer unless this witness actually has been told or
11 knows what these members thought.

12 MR. CUMMINGS: I want him on standby for
13 trial.

14 MR. IDAR: That wasn't my question. Let me
15 restate my question, and I think we have agreed that
16 we will reserve our objections to the time of trial,
17 Mr. Luna.

18 MR. LUNA: I just wanted to give you fair
19 notice.

20 MR. IDAR: All right.

21 Q. My question was this: Based on the discussions you
22 had during this period of time with Lt. Governor
23 Barnes, with the other members of the Board, with the
24 staff of the Legislative Council, with the staff of
25

1 the Attorney General's office -- all of these people
2 that you were working with and consulting with from
3 time to time to get an idea as to how to draw some
4 of these lines, based on your recollection as to what
5 went on in your many conversations and contacts, would
6 it be a fair assumption to say that all of you working
7 on this program simply assumed there was really no
8 problem relating to the situation of the Mexican
9 American or blacks in the counties under the multi-
10 member system that had been followed previously in
11 all counties except Harris?

12 Q Well, that's the purpose of this lawsuit; obviously,
13 there is a difference of opinion about single member
14 districts and at-large districts.

15 Q I realize that.

16 A And I think every member of the Board was contacted
17 by any number of people who advocated at-large
18 districts or advocated single-member districts.

19 Q Did you yourself, based on these contacts, assume
20 that there was no problem?

21 MR. McDANIEL: You are talking about a legal
22 problem?

23 MR. EDGAR: No, no.

24 Q Did you assume that there was no need to be concerned
25 about the multi-member districts in, say, Dallas and

1 Bexar Counties; although you had minorities there,
2 they really didn't create much of a problem in deter-
3 mining whether they were going to get a fair shake
4 in the electoral process for the House?

5 A I didn't assume anything; I followed instructions.

6 Q You did have census data available that would give
7 you the ethnic or racial breakdown as between blacks
8 and whites, did you not?

9 A Yes, sir.

10 Q For every major county in the state, and the census
11 tracts in every county?

12 A Yes, sir, I think we had it for every major.

13 Q If it had been necessary, the actual concentration
14 of the black population could have been plotted in
15 every county and in every city?

16 A I think so, yes, sir.

17 Q Did you have similar information as to the Mexican
18 Americans?

19 A I never did see any such information, no, sir. I don't
20 think so.

21 Q Are you familiar with the fact that that type of in-
22 formation was available in the 1960 Census?

23 A No, sir, I was not.

24 Q Is this the first time you hear that it was?

25 A Well, you know -- if you say it was available, I

1 guess it was available. I was not aware of it.

2 Q Okay. So up until I raised the question today, you were
3 not aware of the fact or the possibility that this
4 type of information was available through the 1960
5 Census?

6 A No, sir, I was not aware of that.

7 Q Okay. Now, you made some statement here earlier --
8 I don't know really at what stage you were referring
9 to, so I would like to clear it up -- you were testi-
10 fying to the fact you were discussing the single-
11 member versus multi-member district issue with differ-
12 ent members of the Board, and that Armstrong was on
13 record favoring single-member districts, ---

14 A I did not say that. I said I only discussed it with
15 one member of the Board.

16 Q I thought you indicated that Commissioner Armstrong
17 also favored single-member districts.

18 A Well, I guess two members, including Armstrong, but
19 Commissioner Armstrong and the Lieutenant Governor
20 are the only two people, as I recall, that I speci-
21 fically discussed it with.

22 Q Okay. Now, you said Martin didn't give you his
23 opinion on this issue. You talked to Martin or had
24 some discussion with Martin, but I think you indi-
25 cated that he did not give you his opinion at any time

1 as to whether he was in favor of the single-member
2 or multi-member districts?

3 A Not to my recollection, he did not.

4 Q You indicated, however, that at one time you told
5 Martin that from the standpoint of the time element
6 it was going to be rough, or a rough program, to come
7 up with single-member districts for the multiple major
8 cities apart from Harris County; do you recall that?

9 A Yes, sir.

10 Q When was that approximately; do you recall?

11 A Oh, ----

12 Q Would this have been before Mr. Barnes told you to go
13 ahead and start ----

14 A Yes, sir, it was.

15 Q I see; do you recall how many days prior thereto it
16 could have been?

17 A It would just be strictly a guess; I would just guess
18 approximately a week.

19 Q About a week before?

20 A Yes.

21 Q Okay; and I believe you further stated that had the
22 Board wanted single-member districts for the other
23 metropolitan areas of the state, that the time factor
24 would have made it impossible?

25 A I did not say "impossible"; I said practically

1 practically impossible.

2 Q All right; practically impossible. And that is what
3 you told Mr. Martin?

4 A Yes, sir.

5 Q About a week before the Tuesday on which you started
6 drafting the final plan?

7 A As I said before, it is strictly a guess, but it was
8 definitely before I started drawing the final plan.

9 Q All right. In view of the fact that you, with the
10 physical help of one other person and the support
11 of the Texas Legislative Council staff, in effect drew
12 a state-wide plan in the period that we have already
13 indicated, two or three days, except for the major
14 cities; did you really think it would have been im-
15 possible to do those, had you started a week earlier
16 with clear instructions from the Board to go ahead
17 and draw up single-member districts for every major
18 city?

19 A In my opinion, it would have been most difficult.

20 Q How big is the staff of the Texas Legislative Council?

21 A I have no idea.

22 Q Have you ever been in their offices?

23 A Yes, sir, I sure have.

24 Q Can you tell me whether they retain a contract
25 of, say, sixty people?

1 A Are you counting secretaries?

2 Q I am counting all people that are available there to
3 work under Mr. Johnson and to do the work of the
4 Council.

5 A I think that question would be better directed at Mr.
6 Johnson.

7 Q Okay. In, I think, another -- let me ask you another
8 thing: When it comes to the guidelines that you say
9 you used, although nobody actually ever told you what
10 to use, apparently from your own experience and what
11 you consider the law to be, and so forth, I think
12 you testified that when Barnes told you to draft the
13 plan, he didn't give you any guidelines other than
14 the questions you raised, which was single-member
15 versus multi-member districts. But then you did
16 recite the guidelines that you tried to follow:
17 equal population, distribution, compactness and no
18 dilution of minority votes. Did you take into con-
19 sideration what is generally known as community of
20 interest of the given geographical area? I realize
21 that's a very general term, but there are certain
22 factors that go into making up a community of interest,
23 such as housing, the level of the income of the
24 people in the area, the geographical location of the
25 area, the demographic data, such as whether the area

1 be Mexican-American, black or mixed, did you take
2 community of interest into consideration?

3 A To the best that I could, with regard to what knowl-
4 edge I had of community of interest, and again I
5 would like to repeat what you said -- community of
6 interest is a pretty general, subjective kind of
7 thing.

8 Q Did you resort to any census data that would have
9 reflected or given you some idea of the community of
10 interest in the various areas?

11 A Well, with regard -- again getting back to Harris
12 County -- with regard to census data on the black
13 population of Harris County, I used that.

14 Q Well, apart from Harris County, did you use it?

15 A Well, I had population data for the entire state of
16 Texas, which I used.

17 Q Actually, wasn't that your main guideline really,
18 population data; you just wanted to be sure that you
19 came up with a plan that had acceptable deviations
20 on a population basis?

21 A Well, I think when you are drawing a redistricting map
22 the first thing you have got to consider is population,
23 of course. I wouldn't say it was my main guideline.
24 That's where you start in redistricting, is with popu-
25 lation.

MR. IDAR: I believe that is all.

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CROSS EXAMINATION CONTINUED

Questions by Mr. Eason:

Q Mr. Spellings, I am Nathan Eason from San Antonio, and I represent Van Archer and others in a contest against both the Senate and the House redistricting. Mr. Archer is the Chairman of the Bexar County Republican Party. Now, I will apologize in advance; I was a little late getting here, and also I haven't had -- some of this has missed me, so if I do go over things that you have covered, please understand it's because I don't either understand or I didn't hear, or because there is a diversity of interest in some areas between the various plaintiffs in this suit. With these thoughts in mind, I would like to ask you a few questions.

Now, you have stated on several occasions during your interrogation that you were working against a time element which of course increased the pressure, your work load, and possibly the ultimate result of your work. Do you feel in your own mind that the time element that was involved, as a result of the Supreme Court mandate, had an effect on the ultimate plan as adopted in any way?

A What kind of effect?

Q If you had had more time, do you figure that you

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could have created a better plan?

A No, sir, I do not.

Q You consider that this is the best possible plan then
that you could have created under the circumstances?

A Yes, sir.

Q All right, sir. Then the time element was of no sig-
nificance, other than the fact it possibly required
you to spend a few more hours?

A Mr. Eason, I have never testified that the time ele-
ment was of any significance, except with regard to the
time element would have been significant had I been
instructed to draw single-member districts throughout
the state; then I do believe that the time element
would have been very significant.

Q Well, you did at one time say it was a trying time;
did you mean by that -- what did you mean when you
said "a trying time"?

A Well, I think most members of the Legislature -- I
am personally acquainted with most members of the
Legislature -- they know who I am and what my job
is with the Lieutenant Governor, and there were a
great many people who had the knowledge or at least
felt like the ultimate responsibility of physical
labor with this map was going to fall on my shoulders,
and I was called at home in the middle of the night,

1 and of course politicians have a very deep interest
2 in especially their own districts; so people just
3 wanted to give me their opinion about things. I had
4 a number of telephone calls; I had people coming to
5 my office to talk to me -- to see me.

6 Q So then actually what you meant by "trying time" was
7 that you felt the responsibility of this work, rather
8 than the days and hours time limit?

9 A Yes, sir; I think that's correct, sir.

10 Q All right. And you further referred to the time
11 limitation at one time; you were of course then re-
12 ferring to the length of time you had in which to
13 draft this plan, were you not?

14 A Well, yes, sir. Of course, the Board went out of
15 existence on October 23rd, so ----

16 Q Now, let's reiterate a little bit more; I believe
17 you did say it would be practically impossible to have
18 drawn in single-member districts in the metropolitan
19 counties other than Harris in the time prescribed;
20 is this correct?

21 A That is my opinion.

22 Q How long do you figure that it would have taken you
23 to have done this?

24 A Well, I simply don't have any idea.

25 Q Well, now, you did do, as I understand, all the

1 drafting of the map with the few exceptions that you
2 have pointed out, such as Harris County single-member,
3 and I believe you mentioned that there was a change --
4 well, Bexar County, apparently this is where you got
5 your 151st legislator, is this correct, in Bexar --
6 didn't you mention before ---

7 A No, that's not where I got it.

8 Q Well, in any event, you did testify you charged out
9 a portion of South Bexar and a portion of the north;
10 is this correct?

11 A No. What I said was, I believe whoever asked me the
12 question asked me to try to pinpoint what the dif-
13 ference was, and I ---

14 Q In the two plans, did you --

15 A In the two plans, other than the 151 members and, as
16 I recall, one of the changes that I made or one of
17 the changes that had to be made to get the 150 in-

18 A involved taking some census tracts out of North Bexar
19 County rather than out of South Bexar County, which I
20 did on the map that had 151 members in it.

21 Q All right, sir. Now, you say that you have no way of
22 knowing how much longer it would have taken to have
23 drawn in the single-member districts?

24 A Yes, sir.

25 Q That's correct?

1 A Yes, sir; I don't have any way of knowing that.

2 Q Well, let me ask you this: Is it your opinion now
3 that you could not have possibly drawn in single-
4 member districts in the metropolitan area in the time
5 prescribed?

6 A No, sir, I am not saying it would have been im-
7 possible.

8 Q Well, you did say, though, it was practically
9 impossible?

10 A Yes; I again want to say that in my opinion, I think
11 it would have been practically impossible; I am not
12 saying it would have been impossible.

13 Q All right, sir. Let me ask you this: Do you think
14 that the time element had any effect whatsoever in
15 the fact that the other metropolitan districts wound
16 up in the multi-member districts other than Harris
17 County to any degree?

18 A I don't know.

19 Q Did it affect your evaluation or judgment concerning
20 this matter if any you exercised in this particular
21 area?

22 A Well, again, I followed instructions. I did not
23 have a vote on the Board, and I was not privy to all
24 the conversations of the Board.

25 Q Did you have an advisory capacity with the Board,

or any member of the Board?

A Certainly I was available to answer any questions

that anybody wanted to ask me.

Q And you do work for Lt. Governor Barnes?

A Yes, sir.

Q Did you, in the conduct and scope of your employ-

ment, advise concerning any of the matters of where

the lines would be drawn, whether it had to do with

multi-member, single-member, or Cass County or

Brewster County, were you consulted and did you

advise regarding these matters?

A I drew the map, to the best of my ability.

Q Yes, sir. And with certain directions, but a good

part of it, as I understand, was your own idea; is

this correct -- as to where the lines would be drawn,

basically it was your own idea and your own plan;

am I correct?

A With regard to what lines now, are you talking about

the entire state map?

Q Yes, sir.

A Or are you talking about ----

Q Let's take the entire state map.

A With regard to the entire state map, yes, sir, it

was my -- I wouldn't call it an idea, you know --

you sit down and start at one end of the state and

1 work the state and make the population figures fit.

2 Q All right, sir. But you did have no decision what-
3 soever on either multi-member or single-member
4 districts in the metropolitan areas; you did get
5 that advice?

6 A It was not advice; it was instructions.

7 Q Instructions, advice; whatever you want to call it.

8 A There is a difference.

9 Q All right, sir. Now, you referred to population,
10 working out populationwise, which of course is a
11 primary element, and I know you have answered some of
12 these questions, but did you in any regard concern
13 yourself with racial, ethnic and political beliefs
14 of particular areas in your division of the state
15 into legislative districts?

16 A Yes, sir.

17 Q Do you know at this time ----

18 A Specifically in Harris County.

19 Q Well, of course, -- yes. Well, did you in Dallas,
20 Bexar, Tarrant, El Paso, Travis and Jefferson?

21 A There is at-large membership in those areas.

22 Q Did you consider -- I believe in some of these
23 counties there are areas in which a portion of the
24 county would necessarily have to go into another --
25 or be incorporated with other counties; is this

correct?

A Yes, sir.

Q Did you -- in that consideration, did you consider racial, ethnic or political affiliations of the people in the metropolitan area that were then incorporated with rural areas?

A It would help me if you could be specific.

Q Well, I just don't know how to be much more specific; if you were carving out a portion ----

A I am talking about with regard to what area you are talking about -- are you talking about the House?

Q Yes, sir, that's all I have discussed. Well, give me an example of one of the metropolitan areas; you take your own example where one of the metropolitan areas was incorporated. You see, most of mine is confined to Bexar County.

A Uh-huh.

Q And the Senatorial Districts that are incorporated in it, as I am not as familiar with this as you, and you did draft the map.

A Yes, sir.

Q So you pick one of the metropolitan areas.

A Let's pick Bexar County.

Q All right. Did you consider them when you added to it, in any particular area where you carved out

1 part of ---

2 A Detracted from it.

3 Q Yes. Did you consider then the racial, ethnic,
4 political affiliations or interests of the people
5 of Bexar County to those of whatever other counties
6 were added for this legislative district in your
7 arrival of that district?

8 A Well, as I recall in Bexar County, there were only
9 three or four census tracts. The primary consideration
10 of course was that these census tracts had to be
11 contiguous to whichever district it was going into.
12 The census tracts that were added to it I think had
13 a community of interest because, as I recall it,
14 there were areas which were more rural areas in Bexar
15 County, in northern Bexar County. Racial -- I do
16 not believe racial considerations were taken into
17 account, no, sir.

18 Q Do you think they were taken into account in any of
19 your preparations concerning this map?

20 A Yes, sir, they were.

21 Q Give me an example, please.

22 A Harris County.

23 Q Well, we are back on the single-member. Give me an
24 example in your multi-member districts.

25 A Well, again, -- and I am not trying to dodge a

question -- it was not entirely my decision with regard to all of them. I relied on some help and some advice from the Legislative Council in regard to these divisions.

Q But you did supply the lines, didn't you -- or did you?

A Well, not entirely. Again, I got back to the example I used before -- you may not have been here when I used Taylor County as an example.

Q Abilene.

A Abilene. Abilene had enough population for one district, and the surplus had to go some place, and I discussed it with Bob Johnson and Johnny Potter, and they told me that the division that was passed by the House they felt like was a fair division. We took it out, and it looked compact, and that was the one that was adopted.

Q I believe you stated before that you worked with one other person principally in the drafting of this thing; is this correct?

A Principally, yes, sir.

Q And who was that?

A Gregg Hooser.

Q In Mr. Johnson's office, did you work with Mr. Johnson?

1 A Yes, sir.

2 Q Now, I realize that you and Mr. Hooser were possibly --
3 correct me if I am wrong -- were doing work in your
4 own office or wherever.

5 A Yes, sir.

6 Q And working together. But then from time to time, as
7 I understand you, you did get in touch with the
8 Legislative Council.

9 A Yes, sir.

10 Q Now, what I want to determine, would you customarily
11 get in touch with Mr. Johnson, Mr. Petter, or Mr.
12 Fisher, or whom would you contact over there?

13 A Either Mr. Johnson or Mr. Petter; either of these
14 two people.

15 Q But this would be -- if this is correct -- in iso-
16 lated cases like Taylor County, and something like
17 that?

18 A Yes, sir.

19 Q By and large, it was you and Hooser.

20 A Hooser was working under my instruction.

21 Q Yes. He was under you -- he was responsible to you
22 and you were responsible to Lt. Governor Barnes; is
23 that correct?

24 A Yes, sir.

25 Q And to use his quote: "There the buck ended." All

1 right. Let me ask you this: Would it be a fair
2 question for me to ask you if the majority of this
3 plan was drawn by you according to what you thought
4 would be acceptable and not dictated by the Board?

5 A I think generally that's true, yes, sir.

6 Q All right, sir. Now, you have of course in your files,
7 I presume, the records and memoranda, and the census
8 -- the various things that you needed in the prepara-
9 tion of this map; is this correct?

10 A No, sir, I don't have them in my files.

11 Q Where are they?

12 A They are in an office on the ground floor of the
13 basement that is under Senator Word's office. It was
14 the office that was used all during the session as
15 the office for the staff of the Senate Redistricting
16 Committee.

17 Q And under whose jurisdiction and control are these
18 records, as far as you know?

19 A All of the records, I would say, would be under the
20 jurisdiction and control of Senator Word.

21 Q But you were working for Lt. Governor Barnes?

22 A I was working for Lt. Governor Barnes and I think
23 also for the Board.

24 Q Oh, yes, I understand that.

25 A The Legislature was not in session, so Senator Word

1 wasn't even in Austin, as far as I know.

2 Q I would like to turn now to the Senate. On the
3 Senate Redistricting bill -- let's see -- that was
4 passed on the 15th of October, is this correct, one
5 week prior to the legislative?

6 A I believe that's true; I don't know. It is public
7 record.

8 Q It is.

9 A I don't remember the exact date.

10 Q I will refresh your memory, just so that we don't
11 have to keep looking (handing instrument to witness).

12 A Yes, sir.

13 Q Has that got three signatures on it?

14 A Yes, sir.

15 Q Well, that will be it, and incidentally that is
16 signed by Mr. Martin, Mr. Barnes and Mr. Calvert;
17 is that correct?

18 A Yes, sir.

19 Q Were you present when that was ----

20 A Yes, sir, the 15th day of October.

21 Q And this would be the House?

22 A Yes, sir.

23 Q On the 22nd day of October; is that correct?

24 A Yes, sir.

25 Q That's signed by Mr. Barnes, Mr. Calvert, Mr.

Armstrong and Mr. Martin?

A Yes, sir.

Q Do you know of your own knowledge why the bill was not signed by the other members of the Board, either or both bills?

A Well, I read in the newspaper why they said they didn't sign them.

Q Did either -- did any of them state in your presence why they didn't sign the bills?

A Well, with regard to the Senate Bill, I stood outside the room where they had the meeting, and I listened to both the Speaker and the Land Commissioner give their reasons.

Q All right. What did the speaker say?

A Roughly, as I recall, he was dissatisfied with the pairings of some of the individual senators, and as I recall he said he was dissatisfied with the way some of the counties ended up in his legislative district.

Q Now, we are talking about the Senate Bill.

A Yes, sir.

Q The two districts he was mainly concerned with, would they be his own home district, which is down in Washington County, was that one of them -- I believe you stated

1 A Well, some of the counties.

2 Q Yes. I mean the drawing of the district would in-
3 corporate different counties.

4 A Yes.

5 Q Was the other one Senator Word's district?

6 A As I recall, it was not Senator Word's district.

7 Q The 24th?

8 A Yes, Senator Ratliff's -- no, let's see -- yeah --
9 no, not the 24th; whichever one that Ratliff and
10 Hightower were paired in; I think he spoke to that
11 one, I am not entirely positive of that, but I think
12 he did.

13 Q Uh-huh.

14 A The fact that Senator Ratliff and Senator Hightower
15 were paired -- I think it may be the 29th.

16 Q Well, I will hand you this map (handing map to
17 witness).

18 A No, it's the 30th.

19 Q The 30th?

20 A Yes, sir. And I think he may have also spoken to
21 the fact that he didn't approve of Waco and Abilene
22 being put in the same senatorial district.

23 Q What county is Meridian in?

24 A Bosque County; right there (indicating).

25 Q Uh-huh -- the 22nd.

A Yes, sir.

Q Now, did you also mainly draft the Senate Redistricting Bill?

A Yes, sir.

Q So that we may avoid a bunch of questions that might be repetitious, did you also do that in conjunction with Mr. Hoover mainly?

A Yes, sir.

Q Would it be fair to say then that you did that mostly -- of course, you did it under the direction of the Board, and did you do it also in conjunction with

Mr. Johnson's office? Well, state any differences.

A Well, there was -- the primary difference was that I had known for a considerable length of time, ever since the Legislature adjourned, that the Senate map was going to be drawn by the Redistricting Board.

Since the Lieutenant Governor is the presiding

officer of the Senate, I feel like I was probably

more familiar with the Senate, and the Senate map

I think was less difficult to draw. I did not rely

nearly as much on any help from the Council in

drafting the Senate map. I simply submitted the

final map to them, and they of course put it into

formal order.

Q When you say put the map into final order, you mean

the bill -- they didn't change the map?

A Yeah, the bill. No, they didn't change the map; they converted the map into a bill is what I mean to say.

Q Let me see if I follow you, so that we will all understand; you had more latitude, would that be fair to say, in your drafting of the Senate bill; you were under less direction?

A Well, it was simply easier to draft the Senate bill.

Q Because you were more familiar with it?

A Well, no, sir, because there were 31 districts instead of 150.

Q Well, you did state, though, of course that you were more familiar with it -- you had been working on it longer, or something like this, didn't you?

A Well, I had known for a long period of time that the Board was going to do it, you see. The Board did not actually -- they were not certain that they were going to have to draw a House map until the Supreme Court issued a mandamus order.

Q Yes, sir. Well, did you get any specific instructions from either Mr. Barnes, the Board, or any other members of the Board in regard to where you drew the lines on the Senate map?

A Well, again I think that the only instructions I

1 got, that they wanted it to be a very fair map,
2 I think because of the publicity that the bill re-
3 ceived which was passed by the Texas House, insofar

4 as it being an unfair map, I think the Board was
5 everly conscious of their work and the fact that
6 they wanted as fair as possible map drawn, and did
7 not want to have to accept such criticism about
8 their work.

9 Q I see. Then the only direction, if I am correct,
10 that you got from the Board in regard to the drafting
11 of the Senate map was that they wanted it to be a

12 fair map?

13 A As fair and as legal as possible.

14 Q As fair and as legal as possible. Now, you are a
15 lawyer?

16 A Yes, sir.

17 Q And I believe you stated before that you had a certain
18 familiarity with the various decisions, whether
19 state or federal, concerning constitutional and the
20 legality of division lines, whether it be legis-
21 lative or court?

22 A Yes, sir, a general familiarity.

23 Q All right. Did you to some degree rely on the de-
24 cisions of Attorney General Martin in this regard,
25 since he is the chief legal officer of the State of

1 Texas -- did he give you any advice concerning any
2 lines, dictates, concerning the criteria set down by
3 either the State of Texas or the federal courts?

4 A With regard to which bill, now; the Senate bill?

5 Q The Senate; we are completely through with the
6 House now.

7 A Okay; fine. I don't recall that General Martin gave
8 me any instructions. I certainly had conversations
9 with General Martin, and I had numerous conver-
10 sations with people on General Martin's staff.

11 Q Well, would that be in regards to the constitution-
12 ality and legality, or did it have to do with
13 preference of any type district, or what -- speci-
14 fically what was the conversation concerning?

15 A Well, again there were numerous conversations. We
16 discussed -- for example, we discussed the core
17 concept, the concept that the closer to the core
18 of an urban area, the greater the community of
19 interest, and we discussed compactness, and such
20 things as that.

21 Q But not in regards to where your lines should be
22 drawn, but just in general information to you as to
23 guidelines, still relying on you to come up with the
24 fairest map possible; is that correct?

25 A Yes, sir, I think so.

Q Did you at any time, while drafting the Senate map, consult with Attorney General Martin concerning any of these issues -- while you were drafting them?

A While I was drafting it.

Q Yes, sir.

A Or before I drafted it?

Q While you were drafting it.

A Not to my recollection, no, sir.

Q How long did it take you to draft this map?

A The Senate map?

Q Yes, sir. Well, 31 districts instead of 150.

A Yes, sir.

Q And you didn't have a single-member -- multi-member problem, did you?

A Well, excuse me for being so slow, let me try and recall.

Q Take your time.

A Well, without regard to the urban areas, I would say it took me maybe three hours to load.

Q All right. Now, what about the urban areas?

A Well, of course they took more time, and I worked on them individually, and I would guess probably it took -- I would say a day, maybe a day and a half.

Q Well, I am a little bit at a loss to understand, which did you draw first? I can't understand --

1 A The entire state. I divided the entire state -- I
2 divided the entire state into 31 districts, except
3 of course in Harris County, I knew there were going to
4 be five senators in Harris County; in Tarrant County
5 I knew there were going to be two, so I did not make
6 any urban divisions when I first drew the map. I
7 drew the map on Sunday afternoon at my house, by
8 myself.

9 Q In about three hours.

10 A Yes, sir. Of course, dividing the urban areas, it
11 took a little bit longer time. I did that at my
12 office, and I think probably I finished Tuesday
13 afternoon sometime.

14 Q Let me ask you this: I don't suppose Mr. Mosser was
15 with you in the three hours at your home on Sunday
16 afternoon when you drew the map at your house?

17 A No, sir, he was not.

18 Q In other words, that would have been totally your
19 project through this point?

20 A Yes, sir. Let me say this: that I probably have
21 drawn a hundred -- that's too many -- at least fifty
22 senate maps, general maps.

23 Q Are all those in that same file that we are talking
24 about?

25 A None of them are, as far as I know.

Q Do you know where they are?

A I tore them up and threw them away. It's kind of like working a jig-saw puzzle, and especially with regard to the Senate map; you know, you don't -- you have time, and you play around with it.

Q All right.

A If you have entire time -- and I played around with it -- I sat in my office ----

Q All right. Next question: The Senate map that you prepared, based on the work you did the Sunday afternoon and the next day and a half or two days, ----

A Yes, sir.

Q ---- As I recall, in your office, was this the final map that was approved by the Board on October 15th?

A Yes, sir.

Q That's all the changes made?

A No changes made from when?

Q Well, from the three hours plus the day and a half to two days in your office, was there any change from the time of the final draft of that map by any members of the Board, or any suggested changes, or any -- in other words, this was the final map; is that correct? You understand that -- maybe I haven't worded it clear enough -- do you understand the question?

1 A Well, let's try it again; word it differently.

2 Q All right.

3 A It might be helpful to me.

4 Q Now, October 15th, do you recall what day of the
5 week this was?

6 A I believe it was a Friday; I am almost sure it was
7 Friday.

8 Q All right.

9 A The 22nd was Friday, so I am sure it was Friday.

10 Q It would have been. Now, the Sunday you were talking
11 about that you worked on it at home, would that
12 have been the Sunday immediately preceding the 15th?

13 A Yes, sir.

14 Q Then of course the Monday and whatever portion of
15 the Tuesday ----

16 A Were immediately preceding the 15th.

17 Q All right. Now, this map that you completed on
18 Tuesday afternoon, or whenever it was, with the
19 metropolitan areas in, was this the map that was
20 approved by the Board?

21 A Yes, sir.

22 Q And there were no changes, either suggested or dis-
23 cussed, between you and members of the Board after
24 your drafting of this map?

25 A Well, after the map was drafted, either the Lieutenant

Governor or myself -- and the Lieutenant Governor felt like he had an obligation to the members of the Senate to inform them what their districts were going to be like or how the final map was going to be -- now, when Senator Schwartz found out how his district was going to be, he was very ----

Q Unhappy?

A ---- displeased with the fact that he had one county and, as I recall it was Refugio County, and he did not believe that Refugio County had the same community of interest that the other coastal counties in his district had, and he came to Austin, and I talked with him late into the night, and ----

Q When would that have been, if you recall?

A Oh, it was probably either Wednesday or Thursday night -- probably Wednesday night, I would guess.

Q All right.

A And I ended up making one change, which put Refugio either in Senator Bridges' district or Senator Patton's district; I don't recall where it ended up; you can look on the map there.

Q And this was at the special instance of Senator Schwartz?

A Yes, sir.

Q Did you check that out with Lt. Governor Barnes?

1 A Yes, sir.

2 Q Did you check it out with anybody else?

3 A No, sir, not to my recollection, I did not.

4 Q Would it be fair to say that with this one minor
5 change and with the general instructions to be fair
6 and legal, was there any other Board supervision of
7 the senatorial map, or was it entirely your baby?

8 A Well, I think it would be fair to say I drew the map
9 at the instruction of the Board, but I had -- I will
10 agree with you that I had great latitude.

11 Q Well, now -- correct me if I am wrong -- but the instruc-
12 tions from the Board, I think you testified to a few
13 minutes ago, was to be as fair as you could be?

14 A That's right.

15 Q Was that all the instructions you got?

16 A I would say that was all the specific instructions I
17 got.

18 Q Well, what general instructions did you get?

19 A Well, as I testified before, I discussed some of the
20 legal problems -- I wouldn't really call them problems --
21 some of the legal direction that the thing should
22 take, the map should take, with some of the staff
23 people in the Attorney General's office.

24 Q When would that have been -- that was prior to your
25 drafting of the map?

CT

1 A Yes, sir.

2 Q All right. Would you mind telling me then what legal
3 guidelines you were instructed to follow in the draft-
4 ing of the map, -- we are talking about the senatorial
5 map?

6 A Well, of course the percentage deviation of population
7 -- I try to keep that as low as possible. In the
8 urban areas compactness was considered, community of
9 interest was considered, the core concept was con-
10 sidered; I discussed all of those things with the
11 staff people in the Attorney General's office, and
12 also discussed them with Bob Johnson in the Legislative
13 Council, who is an attorney.

14 Q And of course you are an attorney?

15 A Yes, sir.

16 Q Is that all?

17 A Well, that's all that I can recall at this time.

18 Q Well, think about it a minute, and think if there
19 were any other guidelines that you followed, please.

20 A Well, that's all I can recall at this time.

21 Q All right. I take it then by my question and your
22 response that you completely ignored racial, ethnic
23 and political guidelines in your drafting of the
24 senatorial map that was approved by the Senate Re-
25 districting Committee of Texas?

1 A No, sir, I did not completely disregard those things.

2 Q Well, ----

3 A It was more important in some areas than other areas.

4 Q Then you just neglected to point that out when you
5 stated ----

6 A Yes, sir; I think that's fair.

7 Q All right. Now, Mr. Spellings, I am going to hand
8 you Texas Senate Districts as enacted October 15,
9 1971.

10 A Yes, sir.

11 Q Is that correct?

12 A Yes, sir.

13 Q This is the map that you drafted?

14 A Yes, sir.

15 Q I call your special attention to Senatorial Districts
16 21, 19 and 26, as set out in your map; okay?

17 A All right, sir.

18 Q Well, first, I am not trying to get away from this,
19 but I want to ask a couple of questions about the
20 map as a whole, and then we will go to the other.

21 A All right.

22 Q Now, was it then your opinion and is it now your
23 opinion that Senatorial District 21 follows the
24 constitutional and legal guidelines as set up by the
25 courts of the United States of America, and of the

1 State of Texas?

2 A In my opinion, yes, sir.

3 Q Do you consider this to be contiguous and compact?

4 A Yes, sir, I certainly do.

5 Q Let me ask you this: Are you familiar at all with
6 San Antonio -- just state in your own words how
7 familiar you might be with San Antonio and Bexar
8 County; by this, I mean as to racial, ethnic, and
9 political areas of the city and county?

10 A Well, I am generally familiar, and I would say I am
11 less familiar now than I was when I drew this map.

12 Q All right, sir. Now, in this Senatorial District 21,
13 you will note, and of course this is your plan, that
14 it completely circumnavigates or encloses Districts
15 19 and 26; is this correct?

16 A Yes, sir.

17 Q And along its western side it goes around 19 and 26
18 in Bexar County?

19 A Yes, sir.

20 Q And other than into the -- enclosing the northern part
21 of Bexar County -- and back over to the map you
22 showed to a moment ago, even the northeast part of
23 San Antonio, this being a part of it?

24 A Yes, sir.

25 Q And you are still of the opinion that this meets

1 the requirements of contiguity and compactness?

2 A Yes, sir.

3 Q All right. Are you familiar with Alamo Heights,
4 Terrell Hills, areas of San Antonio -- the northeast
5 part of San Antonio?

6 A Generally familiar, yes, sir.

7 Q Are you familiar with the fact for instance that they
8 have a Republican Justice of Peace or Republican
9 County Commissioner; did you know that?

10 A No, sir.

11 Q Did you at any time during your studies or your
12 consultation with the Board or any of its members go
13 into the political or voting records or background
14 of the people of the northeast part of San Antonio
15 or northern part of Bexar County?

16 A I was aware that there was a Republican concentration
17 there, but even Republicans have to be some place.

18 Q Thank you very much for your kind advice. I am happy
19 to know that we were considered at least in some
20 light. Did you know they had a Republican County
21 Commissioner and a Republican JP?

22 A No, sir, I was not aware of this.

23 Q Do you feel that there is a community of interest
24 between the people, say of Alamo Heights and Terrell
25 Hills, which incidentally they are incorporated towns,

sort of what we call bedroom suburbs, ---

A If you hadn't pointed that out, I was going to.

Q Well, we will get it all just like it is.

A Only.

Q Would you consider that there is a community of interest between these people basically, who meet in and live at least in the metropolitan area of San Antonio and the people of, say, Starr, Jim Hogg, and Zapata, Duval Counties?

A Well, the community of interest is a very subjective term, as we pointed out earlier. I would say that people in Terrell Hills or Alamo Heights had just as much community of interest with the people in Laredo as they do with people at Lackland Air Force Base.

Q Well, I don't believe that was my question. Now, I don't claim to be an expert in any of these fields, please understand that; I am trying to do my job as an attorney. I suppose most of this area down here which I have been through is ranching --- I am pointing specifically to Starr, Jim Hogg, Zapata, Duval ---

A You suppose that --- I am sorry.

Q It is supposed to be a question.

A I am sorry.

Q Is this correct?

A Well, I am sure there are some ranching communities

involved in those areas.

Q What else is involved down there?

A Well, I am not familiar with all of the specifics of what is involved in each one of those counties, but in Webb County, for example, I would assume that they do some importing and exporting, and that kind of thing.

Q Mr. Spellings, I asked you specifically in reference to Starr, Jim Hogg, Zapata and Duval.

A Yes, sir.

Q Now, if you know, and surely you studied out certain of these criteria in drawing up this map -- if you know what the general economy of these counties would rely upon, whether it would be agriculture, commerce, ranching, or what?

A I would say it would probably be closer to agriculture than anything else.

Q When you say agriculture, you don't necessarily mean farming, do you?

A Well, I think -- you know, part of that area down there is Valley; I think farming, ranching.

Q That's right. Look on there and see what the population of Zapata County is, sir.

A It's 4,352.

Q And that's a fair-sized county?

A Well, it's one of the smaller counties in Texas.

Q Of the four that I have named, though, it's ----

A It's the smallest in population.

Q All right, sir. And Jim Hogg has four thousand some odd, is this correct?

A 4,054.

Q Well, it would then -- certainly I am not trying to argue with you, but it would almost of necessity be ranching, wouldn't it, if they have four thousand people in the entire county?

A I am just not -- you know, I don't feel like I am qualified to answer that question. I don't live in there -- you know, I am not that familiar with what goes on.

Q Where are you from?

A I am from Fort Worth, that's where I was raised.

Q Yes, sir. Well, did you give any of that any study prior to drafting that map?

A Did I give ----

Q Yes, sir.

A Let me put this clear in my mind. Did I study the county or each of the counties in Texas before I -- or these particular counties before I drafted the map?

Q We will stick to those ----

A Those four counties?

1 Q We will stick to Senatorial District 21.

2 A Okay.

3 Q I am on the guidelines or criteria of community of
4 interest.

5 A Okay, sir.

6 Q Maybe I lost you somewhere along the line.

7 A No, I think I am with you.

8 Q All right.

9 A I am trying to answer your question. I did not study
10 these counties with regards to their economy.

11 Q Did you in any wise take into consideration the
12 community of interest of the lower four or five coun-
13 ties in this district with the community of interest
14 of the people of northeastern San Antonio?

15 A Let me get it clear in my mind: Did I take into ac-
16 count the community of interest in these four counties
17 with regards to its relation with the community of
18 interest up here in Alamo Heights and Terrell Hills?

19 Q Yes, sir. And the only reason I am mentioning the
20 four counties, I am taking the bottom portion of the
21 district.

22 A Yes, sir.

23 Q As compared with the upper portion of the district.
24 I don't specifically mean any one county. I just
25 want to know whether you considered, since this is

a rather large district, the community of interest from the people that are furthestest in miles from each other in your arrival of your lines in drafting the 21st Senatorial District.

A Well, as I said before, community of interest is a very subjective term; can I ask you what you mean by community of interest -- what your interpretation of community of interest is?

Q Well, that might make this a little too long, but I would take into consideration, in my opinion in answering the question, economic status, employment, the type of revenue that the county receives from whatever source, where the people work, live, what they do for a living, what their economy is based on, their interest in politics and other things; in other words, a common interest between the parties in the election of a senator which, based upon this, could represent these people, pointing to the lower portion, and these people here (indicating).

A Okay, sir.

Q All right.

A Now, you understand that in drawing Bexar County and the three Senatorial districts which you have pointed out that you give Bexar County the amount of representation that they are entitled from a population

standpoint. The district -- there were a hundred -- if you give Bexar County two senators populationwise, you have an excess that has got to go some place, and that excess in terms of numbers, as I recall, was around 108,000 people, so those 108,000 have got to go some place.

The community of interest consideration was certainly more prominent in my mind, using the core concept and the idea that the greater -- to the core of an urban area, the greater the community interest, it was more prominent in my mind in drawing Senatorial District 26 and in Senatorial District 19, because those two senatorial districts were entirely within Bexar County.

Then you end up with an excess; the excess has to go some place.

Q Everybody has got to be somewhere?

A Everybody has got to be somewhere, yes, sir.

Q Now, are you through?

A Yes, sir.

Q I am going to repeat my question: Did you take into consideration -- I am going to agree with what you said -- I am not going to disagree with it; let's put it that way -- that you do have an excess of we will say a hundred and ten thousand people in

1 Bexar County that has got to be somewhere. Did you
2 take into consideration the community of interest of
3 the people that you put in Senatorial District 11,
4 from the northern part of Bexar County, the Northeast
5 part of San Antonio, along with the extreme southern
6 portion of District 11 as you drafted it -- did you
7 consider that?

8 A My primary consideration was the community of interest
9 that was involved within Senatorial District 15 and 19,
10 and was more prominent in my mind with regards to
11 these two Senatorial districts.

12 Now, in considering community of interest
13 specifically between Alamo Heights and Terrill Hills
14 and the four southern counties that you pointed out,
15 I would have to say from a specific standpoint that
16 there may be some people in there who do not have a
17 community of interest with those four southern
18 counties. And I have to be repetitious, and I am not
19 trying to be unkind, but everybody has got to
20 be some place. There were approximately 100,000
21 people that had to go into a Senatorial district
22 that was comprised mostly of counties outside Bexar
23 County.

24 Q One more time. Did you in your deliberations in
25 drafting the lines of Senatorial District 11 at any

time consider the community of interest between the people in northeastern San Antonio, north Bexar County, and the extreme southern portion of District 21 as you drafted it?

A Yes, sir, I did.

Q All right. In other words, you took all that into consideration when you drafted this, is that correct?

A Well, when you say "took it into consideration," I was generally familiar with the areas which you have pointed out.

Q Yes, sir. Another question: What was your reason -- I understand your core theory, I believe -- what was your reason for going completely around 19 and 26 instead of coming directly up to and including a portion of 19; instead of going directly around the city to take in the north and northeastern portions?

A Well, also taken into consideration, in drawing this map, were the existing senate lines, and they certainly had some consideration in drawing the map.

Quite frankly, I started with Senatorial District 19, and the lines are, as they exist on this map, are relatively close to the old senatorial district lines.

I went from Senatorial District 19, then to Senatorial District 26, and what was left over went to Senatorial District 21.

Q Do you know Senator Rothmann or Senator Barnal?

A Yes, sir, I know both of them.

Q Were you approached by either of them concerning their interest in keeping their districts as near intact as they could?

A Yes, sir, I was. I was approached -- when you say "approached" -- Senator Barnal passed a resolution in the Senate; over a period of about eight months there is no telling how many times I discussed several redistricting, not only with Senator Rothmann and Senator Barnal, but, maybe with the exception of Senator Grover, every member of the Senate.

Q Did it affect your reasoning and decision in drafting Senatorial District 21, the fact that you were going to try to protect the interest of Senator Barnal and Senator Rothmann?

A I can honestly say I was relatively, if any, concerned at all with protecting their personal interest.

Q I am not talking -- well, I don't know what you mean by "personal".

A Well, you said "protecting their interest."

Q In their then existing districts.

A Well, yes, sir.

Q Let me ask you this question: Had you come directly into Lamar County from the south, this would have been

1 a more compact and contiguous district than it is now,
2 is this correct?

3 A Well, that's your opinion; I don't know.

4 Q No, I am asking you. In other words, let's look at
5 the map. Assuming that a point ----

6 A I understand what you are saying. Let's see if we
7 have got the census tract population figures. You
8 know, it would depend on how far you have to go into
9 Sonar County to get 100,000 people.

10 Q As to compactness -- as to compactness with the lower
11 part of this district?

12 A Well, you have to understand, -- I didn't go from
13 twenty-one in; I worked from the middle part out.

14 Q Well, where did you start this?

15 A I just told you; I started with Senatorial District
16 19 and Senatorial District 26.

17 Q Now, let me refresh my memory a little bit. Didn't
18 you tell me when you -- maybe I am confused -- on the
19 senatorial map, didn't you first draft it without the
20 metropolitan areas?

21 A That's right.

22 Q Then how did you start with 19 and 26, which are en-
23 tirely within Sonar County, before you did 21, which
24 is ----

25 A I said before -- well, maybe I have confused you, --

before I did the urban part of 21. In other words, when I first drew the statewide map on the Sunday, as I am telling you, I drew Senatorial District 21, and I put a "U" inside Bannock County, and then I put a line down here, and I put -- marked 100,000 people on my map, meaning when I got to the urban part of the state that there was going to be 100,000 people that were going to go into Senatorial District 21. Historically, Senatorial District 21 has had population from Bannock County in it.

Q I am a little bit at a loss to understand why you completely went around 10 and 11 and curved that 110,000 people, or whatever amount it was, from the north and northeast portion when the best compact -- I will have to ask you -- I don't know whether you have answered that or not -- but in order to make this district as compact as possible, you would have gone directly in from the south into Bannock County, wouldn't your?

A Not necessarily.

Q Geographically compact -- are you testifying here now that this is more geographically compact by going into the northeast --

A I am testifying that I would have to --

Q It seems to me --

1 MR. McDANIEL: It seems to me you are be-
2 coming a little argumentative, Nathan, because Gaudalupe
3 and Medina County both go just about as far north
4 as 21 in Bexar County does so, as far as geographical
5 compactness and distance is concerned, you can say
6 it is six of one and half a dozen of the other, it
7 looks to me like.

8 MR. LUNA: My agreement of counsel, we have
9 agreed that I will be able to ask a few questions
10 at this time, and then Mr. Eason will continue.

11
12 DIRECT EXAMINATION

13 Questions by Mr. Luna:

14 Q My name is Earl Luna, and I represent Ray Orr, who
15 is the Chairman of the State Democratic Executive
16 Committee. First of all, there has been an allega-
17 tion on the part of the plaintiffs that the redis-
18 tricting is such that it discriminates against Repub-
19 licans. Now, I want to ask you in particular whether
20 or not you know a member of the Senate named Senator
21 Ike Harris?

22 A Yes, sir.

23 Q Do you know what party he belongs to?

24 A Yes, sir.

25 Q Political party?

1 A Yes, sir.

2 Q What party?

3 A He is a Republican.

4 Q Have you had an opportunity to discuss with Senator
5 Harris since this map has been drawn as to whether or
6 not he is pleased with his district?

7 A Yes, sir.

8 Q Was he pleased with it?

9 A Yes, sir.

10 Q Is he now pleased with it?

11 A Yes, sir.

12 Q What county does Senator Harris represent; where is
13 his district?

14 A Dallas County.

15 Q In areas such as San Antonio, if you did not have to
16 worry about the one-man - one-vote rule and if you
17 could get San Antonio into three senatorial districts,
18 in other words, if you could just -- by San Antonio,
19 I am talking about Bexar County.

20 A I understand.

21 Q If you could just divide it up into three districts
22 wholly within Bexar County, ---

23 A Yes, sir.

24 Q --- it would be more compact, and they would be
25 closer to their neighbors, wouldn't they?

1 A Yes, sir. The community of interest would be greater.

2 Q All right. Now, is it because of the one-man -
3 one-vote rule that you were following that you had to
4 put 108,000 people out of Bexar County into some
5 other district?

6 A Yes, sir.

7 Q So then, when you considered community of interest,
8 you have to also consider it in connection with and
9 perhaps even subject to the one-man - one-vote rule,
10 don't you?

11 A Well, certainly I think it is secondary to the one-
12 man - one-vote rule.

13 Q Yes, sir. Now, all of Bexar County is considered
14 South Texas, is it not -- don't you consider Bexar
15 County as South Texas, a part of South Texas?

16 A Well, yes, sir, I guess so, yes, sir.

17 Q And generally speaking, South Texans have a community
18 of interest, do they not?

19 A I certainly feel that they do, yes, sir.

20 Q In connection with Starr County, Duval County and
21 Webb County, it has been mentioned that it has an
22 agricultural economy. Now, if agricultural includes
23 oil that is produced from the land, we can certainly
24 say it is heavily agricultural, can we not?

25 A Yes, sir, I know there is a great amount of oil

activity in South Texas.

Q And there are towns where we have storekeepers, retail stores in South Texas; that's right, isn't it?

A Yes, sir.

Q Stores in San Antonio?

A Yes, sir.

Q Banks in South Texas?

A Yes, sir.

Q Banks in San Antonio?

A Yes, sir.

Q As a lot of these folks do some of the same work, is that right?

A Yes, sir.

Q There also has been an allegation or some allegations in one of these suits in regard to allegations that there is discrimination against liberal Democrats.

Let me ask you if you know Senator Oscar Maury?

A Yes, sir.

Q I don't ask you to put any labels on these folks, but have you understood generally that Senator Maury, if he were labeled, would probably be a liberal Democrat to moderate?

A I think Senator Maury considers himself a liberal Democrat, and I think most people generally view him as a liberal Democrat.

1 Q All right. Now, is Senator Maury satisfied with his
2 senatorial district, or do you know?

3 A Yes, sir, I have talked to Senator Maury, and he said
4 he was most pleased with it; told me that he was most
5 pleased with it.

6 Q Now, when you were drawing these lines on the maps,
7 although you have said that you had a great deal of
8 leeway, at the time you were drawing them did you think
9 that the Board had any obligation to adopt whatever
10 you happened to draw, or if the Board was not pleased
11 with your map, would they kick it out and tell either
12 you or somebody else to do some more drawing?

13 A Well, again I want to emphasize that I was under in-
14 struction of the Board and everything that I did was
15 given to the Board for their approval, comment or
16 change, or further instruction to me, or whatever. I
17 certainly felt like they had no obligation at all;
18 as a matter of fact, I was certain they had no obli-
19 gation at all to take what I submitted to them. I
20 submitted it as an employee.

21 Q Yes. So, in drawing these maps, you didn't have any
22 delegation of powers of the Board, or you weren't
23 told that anything you drew that they would adopt,
24 were you?

25 A No, sir, I never was.

Q And I am sure you had perhaps communications with as many members of the Board perhaps as any non-Board member, wouldn't you say?

A Well, my usual method of dealing even I will say

Q It was as much as any non-Board member

A I really didn't understand your question.

Q You had communications with members of the Board and staff during all the time the work was going on?

A Here, and before.

Q Did you ever hear anybody say that there should be any kind of effort made to discriminate in the preparation of this map against any person because of race, national origin, religion or political beliefs?

A No, sir, not at all, to the contrary. I was instructed that these things would be considered, and they wanted the map, as I said before, to be as fair as possible.

Q Considering the one-man, one-vote rule and the other legal requirements of the United States Constitution and the United States Supreme Court, and having had an opportunity to have reflected on this map for some months now and heard the opinions of others, are you still of the opinion that this map, insofar as the House of Representatives and the Senate is concerned, is as fair a map as could reasonably be

prepared?

A Yes, sir, I do.

MR. LUNA: Thank you, sir.

CROSS EXAMINATION RESUMED

Questions by Mr. Bacon:

Q I just have two or three more questions: You stated a moment ago that the only change as far as you could recall in the Senate redistricting map was brought about through a meeting between you and Senator Schwartz, I believe, on approximately Wednesday night after you completed on Tuesday; roughly -- I am not holding you to the date, ---

A Yes, sir.

Q ---- in the evening; based upon taking, was it Freeport, or what county was it?

A I believe it was Refugio County.

Q All right; Refugio County; well, look at the map.

A Yes, sir, it was; it was Refugio County.

Q All right. Refugio County out of his district, and I believe you further stated that your reason for doing this was because of lack of community of interest; is this correct?

A Well, that was Senator Schwartz's view, and certainly I can agree with him on that.

Q Well, obviously you concurred in this ----

A Yes, sir.

Q ---- or you wouldn't have taken it out?

A Yes, sir.

Q Did you get any Board authorization or approval in doing this?

A Well, when I say I took it out, I submitted the change to the Lieutenant Governor, who later submitted it to the Board.

Q So when you submitted the change ----

A In other words, I did not have the authority to arbitrarily make a change. I was an employee who visited with Schwartz and Schwartz giving me his reasons for such a change, and it was easy to agree with him. I then talked to the Lieutenant Governor and suggested that we make such a change, and he agreed to it. And the rest of the Board members were then apprised of it and agreed.

Q Do you recall -- well, let's get to the mechanics of it -- after you had talked to Senator Schwartz that evening, did you then make the change -- I understand that you went through Lt. Governor Barnes -- but did you first redraft the map or that portion of the map, or just how did you go about arriving at the change to suit Senator Schwartz's opinion?

1 A Well, I do not recall exactly how what is entailed,
2 but it was just a minor switch of a county, as I
3 recall it, and, like I say, I talked to Senator
4 Schwartz late into the evening, and I think the change
5 was actually submitted to the Board the next
6 morning.

7 Q All right. You submitted it?

8 A Yes, sir. I submitted it to the Lieutenant Governor
9 and, as I recall, some of the Attorney General's
10 staff people.

11 Q Were they together?

12 A I beg your pardon -- was who together?

13 A I am just trying to get -- you submitted it to the
14 Lieutenant Governor and then you said you thought
15 some of the Attorney General's staff.

16 A Well, I am sure some of the Attorney General's staff
17 people, but I don't think this all happened in the
18 same matter of minutes.

19 Q Tell me just how it did happen; did you walk into
20 the Lieutenant Governor's office and discuss with
21 him the desired change, or did you take a map in
22 there, or just how did this come about?

23 A Well, as I recall, I went into the Lieutenant Gover-
24 nor's apartment and discussed it with him, and ----

25 Q The following morning or that night?

Q It was the following morning, as I recall, and I briefly told him of my conversation with Schwartz and the argument that Schwartz had made, and I told him that I agreed, and -- it was a very simple thing. Like I say, I don't recall now, but it was just a switch made of one or two counties, and it was relatively easy to do; I mean, there was nothing to it, and at that point the Lieutenant Governor agreed.

Q Well, did you then get authority from the Lieutenant Governor to go ahead and make the change?

A Yes, sir.

Q At that time?

A Yes, sir.

Q Without any consultation by the rest of the Board?

A Well, you understand this was very informal; the Board had just had a meeting. When the Lieutenant Governor approved of it, I say the Lieutenant Governor gave the change his approval.

The rest of the Board members then had to give the change their approval. I did not personally take it to the rest of the Board members.

Q Did they have your map then?

A Yes, sir, as I recall, they did.

Q They had the map then without the change?

A Well, they had seen the map without the change;

whether or not they actually had one in their possession, I can't testify to that.

Q Well, had they given their approval or not at that time -- now, I don't mean their approval which naturally they had to give formally and under oath, -- but had they given their tacit approval to the map prior to the change?

A I do not know.

Q All right. Then, based upon the report to Governor Barnes in his apartment the next morning, you were advised to make the change for community of interest reasons, removing Refugio County ----

A I was instructed to make the change.

Q Yes, sir. You were given the instruction to make the change of removing Refugio County from Senator Schwartz's district; correct?

A Yes, sir.

Q And you did then forthwith, or when did you make the change physically on the map?

A Well, you are speaking like there was just one map; I must have had a hundred blank maps in my office. It was ----

Q Well, however it was, Mr. Spellings; I don't know, I wasn't there; you tell me how it happened.

A Well, as I recall, the Legislative Council already

1 had the map, and they were in the process of pre-
 2 paring the bill, and I think -- I just -- well, first
 3 of all, the Attorney General, and I don't recall
 4 whether the Lieutenant Governor -- whether it was
 5 done -- I don't recall just exactly how it was done,
 6 but at some point in time that morning I walked down
 7 to the Council and just showed them what to do. It
 8 was a very simple thing. I assume -- and I think
 9 I am correct in my assumption -- that the Lieutenant
 10 Governor called the other members of the Board with
 11 regard to this small change.

12 Q This insignificant -- well, this small change and
 13 very simple thing to do, what did you add to Senator
 14 Schwartz's district in order to compensate for that
 15 Defoe County, which you took out of it?

16 A I do not recall.

17 Q You don't even know. Do you recall whether or not
 18 the county or counties, or whatever portion you added
 19 to it; I am sure you then checked out the community
 20 of interest of the new county, if it was one, that you
 21 supplied to Senator Schwartz ----

22 A Well, I am not sure I supplied Senator Schwartz with
 23 a new county. I think I may have given him a couple
 24 of census tracts out of Morris County. I think that's
 25 what I did. You see, you are only dealing with

9,400 people in Refugio. With regard to the Senate map, one of the general rules that I tried to follow was that -- and we had growth patterns -- one of the general rules I tried to follow was that in the areas where there was rapid growth that you under-populated to some extent; in the areas where they were losing population, I over-populated, and it gave you -- as I said before, it is easier to draw 31 districts, but with regard to -- it gives you a great deal more flexibility in playing with numbers, and especially when you are just talking about 9,400 people out of 361,000.

Q Do you recall -- I guess it would show on that map -- what did you then do with Refugio County?

A It went into Senator Bridges' district.

Q What district is that?

A Senatorial District 20.

Q Did you at that time compare community of interest between the people of Refugio County with the balance of that district?

A Did I compare community of interest?

Q Yes, sir.

A Well, I am sure I looked at it, yes, sir; I am sure I considered it.

Q Well, after all, that was the reason for you taking

It was of Senator Schwartz's district, wasn't it?

A Senator Schwartz seemed to believe, and I tended to agree with him after talking to him, that since his entire district is a coastal district that runs along the coast, that since Refugio County itself was not a coastal district, that it did not have a community of interest with other coastal districts. And, again, community of interest is a very subjective thing. I think you can argue it either way. Really.

Q Well, I am only taking --

A -- depending on which side you are on.

Q Well, I am only taking the guidelines and the criteria that you considered.

A Yes, sir.

Q When you were drafting this map, the reason for removing Refugio County from Senator Schwartz's district was lack of community of interest; is this correct?

A I think that was a primary consideration, yes, sir.

Q Well, were there any others?

A Well, I think Senator Schwartz's strong feeling about it had something to do with it.

Q I imagine it did.

A But I think the primary consideration was the community of interest argument.

1 Q Did you at this time consult with the senator, whom-
2 ever it was -- what senator wound up with it?

3 A Bridges.

4 Q Did you consult with Senator Bridges concerning the
5 addition of Refuge County to his district?

6 A I am sure that I did, because I called Senator Bridges
7 to tell him what counties were going to be in his
8 district. I am sure I did.

9 Q Now, did you take anything out of Senator Bridges'
10 district in order to compensate for this simple
11 matter of adding Refuge County, which is nine
12 thousand, four hundred and ninety-some-odd population,
13 did you then have to take something out of his
14 district to make up for this addition?

15 A No, sir, I don't -- before I made the change, I had
16 Senator Bridges' district under-populated a little
17 bit, and this over-populated it, and taking into
18 consideration, the total consideration, his district
19 is losing population rather than gaining population,
20 so -- like I say, nine thousand people was just a
21 very small amount, and it allowed me to be more
22 flexible. But I did not take anything out of Senator
23 Bridges' district, no, sir.

24 Q And it is your recollection that you probably got in
25 touch with Senator Bridges about this?

1 A Yes, sir.

2 Q But you don't have any independent recollection whether
3 you did or didn't, is that your testimony?

4 A Yes, sir.

5 Q Did you consult with the legislator that represents
6 Refugio County concerning this change?

7 A No, sir.

8 Q Or any of the people of Refugio County?

9 A No, sir.

10 Q And you have further testified, I believe, that you

11 had almost sole direction in the drafting of all the

12 lines setting up the senatorial districts as approved

13 by the Redistricting Board and enacted on October 15,

14 1971, with this one minor change, under guidelines,

15 the principal one, as I recall your statement -- you

16 corrected as if I am wrong -- to be fair and particu-

17 larly a population equality between the various dis-

18 tricts.

19 A Following the one -- one vote guideline, yes, sir.

20 Q And you, on your own initiative, drafted up the new

21 present Senate Districts, as enacted by the

22 Redistricting Board, --

23 A Not at my own initiative, at the instruction of the

24 Redistricting Board and the Board.

25 Q Yes, sir. At their instruction, with the guidelines

to be fair and keeping the population equation as close as you could; these were your principal guidelines; is that correct?

A Yes, sir.

Q And you didn't at any time from the Sunday afternoon at your house where you spent three hours until the final draft of this map, putting in the metropolitan areas, which you completed about Tuesday afternoon in your office, on your own you did not contact, nor were you contacted by the members of the Board relative to the drafting of any of these lines; is that a fair statement?

A Well, I certainly talked to the members of the Board with regard to drawing the lines in the urban areas.

Q All right. Did you talk to them about any of the lines that you drafted in the three hours at home on Sunday afternoon?

A Yes, I am sure I talked to them.

Q While drawing them ----

A Oh, no, sir.

Q ---- or after drawing them?

A I am sure it was after I drew them, and I talked to them before I drew them.

Q But there were no changes in any of these, save and except Senator Schwartz's change down in ----

A The urban areas were put together, you understand, on a placement basis; in other words, San Antonio, we used Bexar County. When I finished Bexar County, I gave copies of that to the Attorney General's staff, and the Attorney General's staff delivered those to the individual members of the Board.

Q If the individual members of the Board approved, then it went to the Legislative Council to be incorporated into the map. And I used approximate time -- I think all of it was finally completed somewhere late Tuesday.

Q But the only change -- well, I guess "17" is a rural area, is this correct, even with Galveston in it -- how do you consider this -- is all of Galveston County plus the portions of these other counties, with the possible exception that you think part of Harris might have gone into it with the change, --

A I knew part of Harris did. Well, I am sorry.

Q Go ahead.

A Well, I think what I did was put another census tract from Harris County into --

Q To compensate for Roturier?

A Yes, sir, but I already had some of Harris County in there, you see.

Q Oh, I see. Now, with this one exception, though,

1 that was the only change made on the urban -- no,
2 the rural part of your map?

3 A Yes, sir.

4 Q And then on Monday and Tuesday until in the afternoon
5 you drafted the metropolitan areas?

6 A Yes, sir.

7 Q Did you have any aid, advice, or direction, or instruc-
8 tion concerning the drafting of any of these metro-
9 politan areas? Now, we are talking about Monday and
10 Tuesday prior to the Friday it was accepted.

11 A Yes, sir, I did.

12 Q From whom?

13 A Well, I remember particularly meeting with General
14 Martin and his staff people with regard to Harris
15 County, and talking with them about, again, the core
16 concept, and I think the Board was particularly in-
17 terested in Harris County, to make sure that there
18 was no discrimination from a racial point of view.
19 So I did get advice and instruction from General
20 Martin and his staff in regard to that and got their
21 approval.

22 Q Was there any other advice, instruction or direction
23 that you recall that you got in regard to either the
24 metropolitan, urban or rural parts of this map,
25 senatorial districts, prepared by you in this period,

other than the two which you have now mentioned, which would be Harris County on the one hand in the metropolitan areas, and Senator Strauss's district?

A Senator Schwartz's district.

Q Schwartz's, pardon me.

A I got plenty of advice.

Q Senator Strauss is now dead; I am sorry about that; it was before your time.

A No, sir, I didn't know Senator Strauss. I got plenty of advice from individuals who were interested in the senatorial map.

Q Pardon me; I possibly asked the question wrong. Now,

I am talking about the period between Sunday noon at home and Tuesday on your final draft, as I understand it, of this map, you did make the change in Senator Schwartz's district -- we have been over that -- and then you met with Attorney General Martin and his staff relative to the Houston-Harris County; now, during that period were there any other instructions, directions, or advice from the Board or their staffs to you relative to this map?

A Yes, sir, I am sure there was. I was in constant contact with the Attorney General's staff.

Q By telephone, personal, or how?

A Personal and telephone.

1 Q Relative to what?

2 A I was in constant contact with the Legislative
3 Council.

4 Q Relative to any changes, or suggested changes, or
5 what?

6 A No, sir, not relative to any changes; we didn't
7 change anything other than this Senator Schwartz
8 thing.

9 Q I understand that.

10 A Just, like I say, relative to drawing the lines,
11 Again I will go back to my example in Harris County,
12 so ----

13 Q Well, I understood you to say previously that you
14 drew all of these lines?

15 A Yes, sir, I did.

16 Q Would you mind telling me what suggestions, or changes,
17 or modifications, or original insertion of districts
18 was supplied to you by the Board?

19 A I am sorry; I don't understand that question.

20 Q Mr. Spellings, I know we are all getting a little
21 weary; I have been at it all week. Correct me if
22 I am wrong -- I understood you to say originally that
23 you drafted this whole map?

24 A Yes, sir, I did.

25 Q That you had previously worked with the joint

committee, I believe, of the Senate and House, or, anyway, you worked on it prior to even this Board being enacted; is this correct?

A No, sir, that's not true.

Q That's not true. But you did, on your own and without the help of Hooper or anyone else, you did draw this map as it is now approved. The point I am trying to get at, we have seen that there was a change made in the Senator Edwards district and the Harris County senatorial districts when you met with Senator Martin's staff; now, I want to know what, if any, other lines were dictated, advised, directed by members of this Board or their staffs concerning your drafting of this map?

A I don't recall any.

Q All right. One other question: What is your background, training and experience in the field of redistricting?

A Well, I don't know how you get background training in the field of redistricting.

Q I am not sure I do either, Mr. Spellings, but let me rephrase it. Now, you are a lawyer, you are what -- thirty years old?

A Yes, sir.

Q And you have been working for Lt. Governor Barnes

1 I think almost during the entire time that you have
2 been licensed to practice law, is that correct?

3 A During the entire time I have been licensed to prac-
4 tice law.

5 Q During the entire time, but you had done a little
6 work of practicing some law -- I don't care to get
7 into that.

8 A All right, sir.

9 Q But during the time that you have been working for
10 Lt. Governor Barnes, we'll say, how long has that
11 been?

12 A Since August 1, 1966.

13 Q All right. What specifically has been your duties
14 on his staff?

15 A My duties were general -- I would say general until
16 February of 1968. When I say general, I answered
17 correspondence, I ran errands, I did whatever had to
18 be done at the instruction of the Lieutenant Governor
19 or Mr. Glenn Biggs; he was then the Speaker; any-
20 way, Sen Barnes' Executive Assistant. He left in
21 January, '68, and the Lieutenant Governor appointed
22 me Executive Assistant in February, 1968, and from
23 that time until today I have the responsibility of
24 running his office.

25 Q All right. When did you first work on any type of

redistricting plan?

A Well, I said before that I didn't work on it during the Legislature; that's not true. The first time I ever worked on any redistricting plan to my knowledge was the last twenty-four hours of the Regular Session, 1971.

Q Of 1971?

A Of 1971.

Q Which would have been ---

A It was in May, as I recall the latter part of May. And the Conference Committee that was considering the Congressional Redistricting Bill was having difficulties, and it just so happens that Senator Word was Chairman of the Sub-Committee on the Congressional Bill as well as the Sub-Committee on the Senate Bill, and Senator Jordan was Vice-Chairman of both of these Committees. They were tied up with the problems with the congressional bill, and the Lieutenant Governor told me to try to work with Senator Word's staff to get a Senate map prepared, so that we could get the map passed by the Legislature.

Q That would have been in May of '71?

A '71, yes, sir. I do not think the Lieutenant Governor -- the Lieutenant Governor tried to do everything he could to see that a map, a Senate map, was

considered by the Texas Legislature, but we just simply ran out of time.

Q Prior to that time, had you ever done any redistricting or drafting of any such plans, or had any studies or experience in this area?

A Well, no, sir. I had never drawn a redistricting map or never worked on a redistricting map. I think the last time the Legislature did any redistricting was in 1965, as I recall, so ----

Q I am just trying to establish what your experience is.

A I know what you are trying to establish.

Q All right. Now ----

A There would never have been an opportunity for me to become experienced in it.

Q But you haven't -- you weren't -- correct -- you weren't experienced in it prior to that time?

A I wasn't experienced, in the fact that I had never done any of it, that's right.

Q Well, you weren't experienced in any regard?

A That's right.

Q All right. Now long did you work on it at that time -- you said it was right prior to the end of the session?

A Yes, sir, I think it was the last twenty-four hours.

Q All right. Did you do anything on it from that time forward up until you started with the Redistricting Board?

A Well, as I said before, I must have drawn, not telling the law to, some maps for the Legislature. I have had thousands of conversations with people who had an interest in redistricting, and I have sat down and worked with people who wanted -- especially members of the Senate -- that might come in and have a particular interest in their senatorial district, and say, "Well, look, we can do it this way, or we can do it that way."

Q Well, most of this is what we would call a subjective or personal interest, isn't it?

A Yes, sir.

Q All right. But in the interest of time, you worked on it twenty-four hours prior to the end of the session in May of 1971; you drew all these maps, but I want to know when you started working on any type of redistricting?

A As soon as the Legislature adjourned from the Regular Session, I, from that point until these maps were adopted, I talked and worked with any number of people regarding redistricting.

Q All right. When you say any number of people, are you talking about elected legislators and senators in

the State of Texas principally?

A No, not principally.

Q Well, who else?

A Well, anybody that was interested in it, anybody that wanted to come to see me about it.

Q People that had an interest in how the state might be redistricted?

A Yes, sir.

Q And you haven't had any -- I know this is -- I don't even know what an expert would be in this field, Mr. Spellings, I will be frank with you -- but you haven't had any special training, background, education or experience in redistricting or the drafting of redistricting bills, maps, plans, other than what you have stated here, is this correct?

A That is correct, but I don't know where you would get such training.

MR. KASON: I believe that's all.

- - - -

Q All right. Well, let's get this sort of record in:
 Congressmen, community of interest, and the core
 concept were factors that you used along with, I
 presume, one-man-one-vote?

A Yes, sir.
 Q You have also mentioned in earlier answers that you
 had a historical approach in looking at old lines;
 did you have that in Harris County, as well?

A Well, it was not -- it was considerably more difficult
 to look at the historical lines in Harris County,
 because Harris County had grown to the extent that
 they were now entitled, with the addition of Fort
 Bend, to five full Senators with the addition of Fort
 Bend County.

Q Now, Mr. Wilkin, what were they, for the sake
 of the record, before this last redistricting; how
 many Senators?

A Well, they had four Senators, and then Senator
 Scherr had a small part of Harris County -- they
 only had four.

Q Now, Mr. Wilkin, that's right.

Q In addition to speaking to members of the Attorney
 General's staff, what other types of people did you
 speak to, again about the racial question in Harris
 County?

1 Q All right. Well, let's get this sort of record in:
2 Compactness, community of interest, and the core
3 concept were factors that you used along with, I
4 presume, one-man - one-vote?

5 A Yes, sir.

6 Q You have also mentioned in earlier answers that you
7 had a historical approach in looking at old lines;
8 did you have that in Harris County, as well?

9 A Well, it was not -- it was considerably more difficult
10 to look at the historical lines in Harris County,
11 because Harris County had grown to the extent that
12 they were now entitled, with the addition of Fort
13 Bend, to five full Senators with the addition of Fort
14 Bend County.

15 MR. McDaniel: What were they, for the sake
16 of the record, before this last redistricting; how
17 many Senators?

18 A Well, they had four Senators, and then Senator
19 Schwartz had a small part of Harris County -- they
20 only had four.

21 MR. NELKIN: That's right.

22 Q In addition to speaking to members of the Attorney
23 General's staff, what other types of people did you
24 speak to, again about the racial question in Harris
25 County?

A I talked to anybody that wanted to talk to me.

Q Well, who in particular did you speak to about the serial frame that all of you saw as a point of concern in Harris County?

A I don't recall. I could have -- you know, I don't recall any specifics.

Q Did you speak to Mr. Bennett Collier of Houston?

A I spoke to Mr. Collier several times.

Q All right. Did you specifically --

A Yes -- I am not sure I specifically talked to him about the serial --

Q Did you did talk to him about the lines in Harris County?

A They also, I talked to Mr. Collier; I talked to Sid Brown; I talked to Ray Brown; I talked to Senator Brooks; I talked to anybody who wanted to talk to me, and they were considerable.

Q Did you speak with Mr. Collier during the time that you were drawing the Harris County lines?

A I could have; I may have -- I don't recall.

Q Did you speak to Mr. George Russell about Harris County lines?

A Yes, sir.

Q Did you speak to him during the time that you were drawing the lines?

A I could have; I don't recall.

Q All right. Did either of these two gentlemen submit a plan to you for Harris County?

A Mr. Collier didn't submit a plan; the Houston Chamber of Commerce submitted a plan; they didn't submit it to me, they submitted it to the Board.

Q All right; what about Mr. Bracemell?

MR. McDaniel: You say Mr. Collier did not submit a plan?

A No, sir.

MR. McDaniel: "No, sir," he did not?

A No, sir, he did not submit a plan to me.

Q Do you know if he submitted one to the Board?

A I do not know.

Q Would it have come to you if it had been submitted to the Board?

A Not necessarily.

Q All plans were not funneled to you?

A No, sir.

Q Even though every ----

A They were available to me.

Q All right. Everyone knew you were going to be drawing the lines; is that a correct statement?

A Who is "everyone"?

Q Everyone on the Board?

1 A Well, I think that is fair to say that everyone on
2 the Board knew that I would eventually have that
3 responsibility.

4 Q All right.

5 A But when the Board actually had their first meeting,
6 it was released that the Texas Legislative Council
7 was going to also serve in a staff function for the
8 Board, and I think they may have named Mr. Johnson,
9 Mr. Bob Johnson, as parliamentarian or something,
10 and it was put out and released that anybody having
11 any plans that they wanted to submit should submit
12 them to the Texas Legislative Council. So I think
13 almost all of the plans were submitted to the
14 Legislative Council, and they were available to me
15 if I had wanted them.

16 Q Did Mr. Braswell submit a plan?

17 A Well, Mr. Braswell brought me a copy of a plan, the
18 Houston Chamber of Commerce plan.

19 Q All right. Did that particular plan appear to be
20 similar -- does it appear to be similar to the plan
21 that was ultimately adopted?

22 A No, Well, there are some similarities.

23 Q Now, with respect to the question of racial
24 percentages, was there a particular discussion
25 between you and Lt. Governor Barnes about the

1 percentages of Blacks in the various new Senatorial
2 Districts?

3 A Yes, sir, there was.

4 Q All right. Was there a discussion -- or was there
5 some desire to approximate the percentages of
6 Barbara Jordan's old district?

7 A Well, the Lieutenant-Governor was very concerned
8 that we avoid diluting in any way the representation
9 that the Blacks had, represented by Senator Jordan's
10 district. When he told me -- when I say "he" --
11 Greg Hooser and myself finished Harris County, the
12 way it eventually is drawn right there. I cannot
13 recall whether those figures are accurate or not,
14 but, as I recall, we totalled up the Black population
15 in what is now Senatorial District 11, and I think
16 it was one-tenth of one per cent more Black than
17 in Senator Jordan's present district.

18 Q All right. What figures did you use for Senator
19 Jordan's present district, what census information
20 did you use?

21 A It was something that -- it was information that
22 the staff of the Senate Redistricting Committee had
23 compiled over a period of time.

24 Q Well, what I mean is, at what point in time did you
25 measure the Black strength in Senator Jordan's old

1 district; was it as of 1960 when that census was
2 prepared?

3 A I don't know.

4 Q Was it at the time she first ran for office?

5 MR. McDaniel: He just said he didn't know.

6 If you want to know, I will tell you; it was 1970.

7 A I don't know.

8 Q You do not know?

9 A I do not know. I told Greg Hecker to determine what
10 the Black population was of Senator Jordan's old
11 district and then to figure out what the Black
12 population was of what is now Senatorial District
13 II; and, as I recall, the figures came up that
14 Senatorial District II was one-fourth of one per cent
15 blacker than Senator Jordan's new senatorial district.

16 Q All right.

17 MR. WILKIN: And, Mr. McDaniel, the figures
18 that were used for Senator Jordan's old district
19 were 1970 census figures?

20 MR. McDaniel: That is correct.

21 MR. WILKIN: All right.

22 MR. McDaniel: As I understand it.

23 Q And you do not have personal knowledge of what the
24 source of the percentages was?

25 A Well, I certainly would assume that Greg Hecker used

1970 census figures. I can't imagine him using anything else but 1970 census figures.

Q All right. You stated that there was, as you understand it, a one per cent increase, or one-tenth of one per cent increase?

A One-tenth of one per cent increase.

Q Do you have a recollection of the figures, the percentages, that were involved, in addition to the fact you stated there was a tenth of a per cent distinction?

A Well, I think -- and I want to state that I am not at all sure about this, but I think that Senator Jordan's old district had 39.8 per cent Black population, and what is now Senatorial District 11 had 39.9; but, again, I am not at all sure of those figures.

Q And these figures were supplied to you by whom?

A Greg Hooper; I instructed him to make runs for me and determine these figures.

Q Now, moving back to the question of guidelines that you used, let's take, for instance, the question of compactness; I want to show you the Texas Senate Districts as enacted by the Legislative Redistricting Board for Harris County, and ask you if you feel that, for instance, Senate District 13 satisfies

your criteria for compactness. Now, 13 is the one that horseshoes around the entire county?

A Yes, sir. Well, again, with regard to the core concept, you start at the middle and work out. In Harris County there is approximately 1,700,000 people in Harris County. The core itself is roughly 900,000 people. As you can see, we created three core districts in Harris County; I think, with regard to what you refer to as the horseshoe district, it is composed primarily of the satellite cities of Houston proper.

Q All right.

A So, you know, compactness is only one thing to take into consideration.

Q Fine. We will get to the others. My question as to the criteria of compactness for Senate District 13, would you say that it satisfies that?

A When taken into consideration with all of the other things you have to take into consideration in drawing the map, I think it does.

Q Now, with respect to community of interest, are you personally familiar with Harris County?

A Again, only generally.

Q Do you know whether or not there is a substantial set of diverse interests in District 13?

1 A No, sir, I am not aware that there is.

2 Q All right. It is your understanding these are
3 primarily satellite cities, and the community of
4 interest would be -- I mean, they would be fairly
5 homogeneous?

6 A I am sorry; repeat that.

7 Q You are not aware of a divergence of interests in
8 District 13?

9 A Well, certainly. Again, community of interest is a
10 very subjective thing, and I am sure that you can
11 pick out some points in there where you might argue
12 that there is not a community of interest.

13 Q Well, I am asking you for your overall characteriza-
14 tion; would you say the interest in 13 are homo-
15 geneous, that there is -- you know, are the people
16 homogeneous, for the most part?

17 A I would say, generally speaking, there is a community
18 of interest with regard to the people in Senatorial
19 District 13.

20 Q All right. Now, moving to District 13, which you
21 characterize as a core district; would you say again
22 that there is a lack of substantial diversions of
23 interest in that district? And if you are not
24 familiar with the city, Mr. Spellings, let me remind
25 you that the western part of District 13 is River

VII

Cahn.

A Uh-huh.

Q And the easternmost part would be a Black ghetto area.

MR. McDaniel: I object to the characterization of both this area and River Oaks; I know that much about Houston. And I also object to the interrogator testifying to what this is.

MR. WILKIN: Well, all right.

MR. McDaniel: And I want it clearly reflected in the record.

Q If you understand it to be differently, let me know; how would you characterize the western part of District 15?

A Are you familiar with the core concept, that the closer to the core of an urban area, the greater the community of interest?

Q Well, of course, I am asking the questions now, and my question is

A I don't think I can answer your question.

Q My question is, are you familiar with the nature of the people who live in the western part of District 15?

A I am generally familiar with all of Harris County and that particular area.

1 Q All right. How would you characterize those people
2 generally?

3 A Again I'll say I am generally familiar.

4 Q All right; how would you characterize those people
5 generally?

6 A I am sure there are all different kinds of people.

7 Q All right. Would River Oaks fall within this western
8 part?

9 A I think that probably what is called River Oaks is
10 in the western part.

11 Q Do you understand River Oaks to be a very affluent
12 area in Harris County -- "Yes" or "No"?

13 A I would say it is.

14 Q All right. Let's talk about the eastern part; do
15 you know this part to be a substantially Black
16 ghetto area?

17 A I know there are other census tracts in that eastern
18 part that are predominantly Black, yes, sir.

19 Q All right. Would you say, sir, that there is a
20 substantial or a general community of interest
21 between the eastern part of District 15 and the
22 western part?

23 A Well, again, community of interest is very subjective;
24 I think you can argue both ways.

25 Q Well, how would you argue it; what would you say?

make them vitally interested in the thing.

MR. WILKIN: Well, of course, that's something you can develop by your questions.

MR. McDANIEL: It is an unfair question, it seems to me.

THE REPORTER: I can't get both of you talking at once.

Q My question is ----

A Some people who live in the eastern part of that district work in the western part.

Q All right. All I am asking you, sir, is to characterize as best you can whether or not you feel there is a substantial community of interest between the people in the west and the people in the east of District 13?

A I don't think I can answer that question, the way you have it phrased -- do I think there is a substantial community of interest between ----

Q You stated -- just let me do it a different way -- you have stated that one of the considerations that you were instructed to consider, ----

A Uh-huh.

Q ---- and one you did make was that of community of interest. All right; so, using your term however you were using it, ----

1 A I did not start off with the primary consideration
2 being community of interest.

3 Q All right; what was your primary consideration
4 other than the one-man - one-vote?

5 A Okay; with regard to Harris County, I think the next
6 consideration was to draw the lines from the middle
7 out.

8 Q All right. But, again, ---

9 A And the next consideration was to try to avoid as
10 much as possible any dilution of the Blacks.

11 Q All right.

12 A Dilution of strength of the Blacks.

13 Q In any event, using -- we are just going down each
14 of these, and we are now on community of interest,
15 which is one of the criteria.

16 A All right, sir.

17 Q Does State Senatorial District 13 have the people
18 in the west and the people in the east united in a
19 community of interest; do they share an interest,
20 and if they do, what interests are they?

21 A I would have to say I am not that specifically
22 knowledgeable enough about these areas to be able to
23 answer that question.

24 Q That's fair enough. And would your answer be the
25 same with respect to the other State Senatorial

Districts in Harris County?

A I think so, yes, sir.

Q All right. So you are stating that you do not know whether or not they have a community of interest?

A I didn't say that.

Q You don't have the knowledge to give us the answer at this time?

A I don't have the knowledge to tell you specifically what community of interest they may or may not have.

Q Well, but I am asking you whether or not ----

A You start again with the assumption that people who live in the core area of an urban district have a community of interest.

Q All right. Well, let's take that.

A Despite whether they are Black, White, Republican, Democrat, or whatever.

Q All right. Let's take that for a start.

A There is obviously a very little community of interest between a man that lives in Richland Hills and makes \$500,000 a year and a guy who is Black, and the guy making \$500,000 a year is Republican, and the Black who is working as a janitor, who makes \$200.00 a month and is a Democrat. You know, depending again on what your definition of "community of interest" is, I am willing to say that these two examples of

[C:]

people, they probably share very little, if any, community of interest.

MR. CHURCHMAN: Why don't you let that be the definition.

Q Well, are you saying that you are not familiar with the median income levels in this district?

A I would say ----

Q Generally speaking; we are not talking about figures.

A ---- generally that I could make a pretty rough guess and probably be pretty close.

Q All right; what would your guess be ----

A I work under the assumptions that have been spoken to in court cases, that the closer to the core, the greater the community of interest is.

Q All right.

MR. McANILL: Without trying to figure out what they meant by it.

A Without trying to figure out what they meant by it.

Q All right. And, of course, you are now characterizing 15, 4 and 11 as core districts; is that right?

A Yes, sir. I would say they are core districts, in that some of them touch the boundaries of Harris County.

Q Okay. And so that whatever community of interest some, optimally the people in those three districts

would be -- would have all of the characteristics of core dwellers, whatever that is?

A I'll go along with that.

Q All right. So we have got compactness, which you characterized, as far as Harris County, as being satisfying, and we have got community of interest, which you have stated you do not have the particular knowledge to really comment intelligently on, the community of interest within the particular State Districts, Senatorial Districts, ----

MR. McANIEL: That's not a fair characterization.

A I do not think I said that.

Q All right. Let's go back and characterize each of these State Senatorial Districts.

A Let me try to say again what I thought I just said before. I said I work on the assumption that the closer you are to the core, the greater the community of interest is; and I started from the middle and worked out. I do not have specific knowledge with regard to what you are trying to pin me down to with regard to community of interest. I am only generally familiar with Harris County.

Q All right. Did you have available to you the 1970 census information, which would cover not only Black,

1 White or non-White percentages, but also such things
2 as dwelling characteristics, plumbing characteristics,
3 and that type of thing; was that available to you
4 if you wanted to use it?

5 A I am sure I could have gotten it somewhere.

6 Q All right. So, to test your assumption as to the
7 nearness to the core, ----

8 MR. Mc DANIEL: I am not sure he could
9 have as to plumbing characteristics. If that's in
10 the census, I don't know about it, and I don't want
11 this witness' admission that he might have gotten
12 it somewhere besides from the State. I don't know
13 whether you get plumbing information or not, and I
14 am not sure that that has any bearing on apportion-
15 ment, anyway.

16 Q But you could have tested your assumption, at least
17 in part, by looking at census information, could
18 you not -- census tract information?

19 A I got my assumption from court cases, and I tried
20 to follow whatever legal guidelines I had available
21 to me.

22 Q All right. Now, would another characteristic or
23 another desirable characteristic of districts be
24 fairly straight lines, fairly straight boundaries
25 of the districts, based upon your experience?

1 A Well, I have never seen anyone or read any case where
2 it says that straight lines is any kind of a
3 criteria.

4 Q All right. Have you ever read Hamilton vs. Light-
5 foot?

6 A No, sir, I don't think I have.

7 Q All right.

8 A I may have, but I think it speaks more to compactness
9 than it does to straight lines; but, again, I am not
10 familiar with the case.

11 Q But you do have -- I mean, you are considered expert
12 enough by the State to draw both the House and the
13 Senate Redistricting maps; would you, based upon your
14 experience, feel that straight lines would be a
15 desirable ----

16 MR. McDANIEL: That's not a fair character-
17 ization, either; nobody has held him out as an expert.
18 It just befall his task to do it.

19 Q Based upon your experience, would you feel that
20 straight lines would be a desirable characteristic of
21 districts, something to strive for?

22 A Oh, I think if I could draw straight lines and make
23 it look good, I think certainly that would be
24 something you would strive for. But, especially when
25 you get into these urban areas, I am sure you have

noticed the census tracts are in the most unbelievable kind of shapes that I have ever seen. Now in the world you could draw straight lines and use the census tracts in all odd shapes, I don't know.

Q All right. Were you ever supplied with Black or White - non-White percentages by anyone besides the sources that you have testified to? Were you ever given any percentages by Lt. Governor Barnes?

A No, sir, not to my knowledge, I wasn't.

Q Were you ever given any by Mr. Collier?

A Not to my recollection, no, sir.

Q Mr. Bracewell?

A Not to my recollection, no, sir.

Q All right. Did you have the Houston Chamber of Commerce map before you ----

A Oh, I am sorry; Mr. Bracewell's map, that was the Houston Chamber of Commerce map, did have a breakdown behind it that showed or that gave the Black population in each of those Senatorial Districts.

Q Okay,

A But it was not drawn out on the map itself; it was just put behind the map in a table form.

Q All right. Did you have that map before you when you drew the Senatorial Districts for Harris County?

A No, sir.

1 Q So that the similarity, if any, between that map and
2 yours would have been gratuitous?

3 A Well, I was very familiar with the Houston Chamber of
4 Commerce map, and let me -- the Houston -- the Harris
5 County map was not -- I didn't just sit down and draw
6 it in a matter of minutes or a matter of hours; it
7 took considerable time and work, and I had the Houston
8 Chamber of Commerce map in my desk, and certainly I
9 could have looked at it at different periods of time.

10 Q All right. So there were ----

11 A I did not -- the point I am trying to make is that
12 that map was not the only map I had there of Harris
13 County. I had about three or four maps that had been
14 submitted to the Board.

15 Q Do you remember the sources of those maps?

16 A Oh, no; no, sir, I really don't. I believe one of
17 them was Curtis Graves' map.

18 Q How many times do you estimate you consulted with
19 Mr. Bracewell on Houston Senatorial Districts?

20 A Oh, I don't know.

21 Q Would it be twenty?

22 A I don't think it would be twenty, probably closer
23 to ten; it is just a guess.

24 Q Between ten and twenty?

25 A It may have been between ten and twenty; I don't know.

Q21

I talked to him, you know, -- I am trying to give you a true impression of how many people I talked to. It was thousands.

Q Did you ever have any of your meetings at a private office leased by the Attorney General or run by the Attorney General; do you know of any private offices the Attorney General has?

A Yes, sir. When you say "private offices," --

Q Outside of the State Building?

A Well, I think it is a State Building, though, but it is not in this building.

Q What is the location?

A Well, it is several blocks north of here.

Q Do you know the address?

A No, sir.

Q Did you and Mr. Bracewell ever meet there?

A Yes, sir.

Q Was that in the presence of Lt. Governor Barnes?

A I think he was there briefly.

Q Okay. And was at least one of the things you discussed the Houston Senatorial Districts?

A I think that's all we discussed.

Q Okay.

A But, again, I want to point out I had several such private meetings with people who don't necessarily

1 share Mr. Bracswell's view of how things ought to
2 be done.

3 Q All right. Now, as I understand your testimony, you
4 found it impractical to consider drawing Harris
5 County lines from a historical point of view; that
6 is, the county had grown so rapidly that the old
7 lines were really meaningless?

8 A Well, yes, sir, I think that's right.

9 Q So that was not a factor, the history was not a
10 factor?

11 A Well, it was not a primary factor, no, sir. I think
12 what is now Senatorial District 6 has probably got
13 more to do with historic lines than any of the others.

14 Q How did you find out from, I guess it was Hesser, is
15 that who it was that gave the percentages, the
16 difference in ----

17 A Yes, sir.

18 Q Okay. In what form was that information delivered
19 to you; did he simply tell you he had checked in
20 and percentage-wise -- the difference in per cent?

21 A Yes, sir, that's right.

22 Q Was there a written memo on that?

23 A No, sir, not to my knowledge.

24 Q He simply said, "I calculated it," and that is what
25 it was?

1 A I am not even sure Mr. Hesser calculated it. He had
2 several people working, part-time employees, that
3 were working for him, and it may have been one of
4 those people.

5 Q In fact, Mr. Hesser is the one who communicated it
6 to you?

7 A Yes, sir.

8 Q Okay. And as I understand your testimony with Mr.
9 Hesser, the map that ultimately became the Texas
10 Senate Map was submitted to the Board piecemeal;
11 in other words, they would deliver that ----

12 A Well, the urban area was.

13 Q All right. They got the whole State map first?

14 A Yes, sir.

15 Q And then they got Harris, and then they got Harris,
16 or in whatever order that was?

17 A Yes, sir.

18 Q And each of those were approved separately?

19 A Yes, sir.

20 Q And you were simply told by Lt. Governor Barnes
21 that this part was okay as far as the Board was
22 concerned, and you could put it in the map; is that
23 the way it worked?

24 A Well, I think it was probably the Attorney General's
25 staff. The Attorney General's staff was the one who

1 actually -- I gave them the maps, and they made the
2 contacts within individual members of the Board, and
3 then I was contacted by the staff. With regard to
4 some of them, I personally took them over to
5 Commissioner Armstrong and visited with him about
6 them, and when the approval was gotten, then they
7 went to the Legislative Council.

8 Q Did you visit with Commissioner Armstrong about
9 Harris County?

10 A Yes, sir.

11 Q Did he voice any objections to the map?

12 A Yes, sir.

13 Q And what were the nature of his objections?

14 A Well, quite frankly, I did not -- I really couldn't
15 understand all of his objections, but I think his
16 primary objection was that he didn't feel like the
17 Blacks were given fair representation.

18 Q All right.

19 A Even though there was a district that was blacker
20 than Senator Jordan's old district.

21 Q Okay; and did you reject that argument?

22 A Well, let me say that I was not a part of the
23 decision-making process.

24 Q We will talk about that in a second, but did you
25 personally reject that argument?

1 A Well, I did not feel that it was valid, no, sir.

2 Q All right. Now, when we talk about Senator Schwartz
3 getting a change; in fact, it was your decision; you
4 agreed with Senator Schwartz and then presented it
5 to Lt. Governor Barnes?

6 A No, it was not my decision.

7 Q Well, but I am saying, you ----

8 A Let me say if it had been left to me, I wouldn't have
9 made the change.

10 Q All right.

11 A But I, of course, talked to Senator Schwartz, and I
12 presented it to the Lieutenant-Governor -- as a
13 staff employee, presented it to the Lieutenant-
14 Governor.

15 Q All right. Did you present Commissioner Armstrong's
16 objections to Lt. Governor Barnes?

17 A Commissioner Armstrong himself presented his own
18 objections.

19 Q All right. Did you personally present them to Lt.
20 Governor Barnes?

21 A I did not feel that -- I mean, why would I present
22 them myself if the Commissioner himself came over
23 and ----

24 Q Your answer is that you did not, and that's all I am
25 asking you -- did you?

1 A I was present when the Commissioner himself came
2 over and he and the Lieutenant-Governor personally
3 discussed Harris County. I was there and present at
4 the meeting.

5 Q And that would have been after you had visited with
6 Commissioner Armstrong and he voiced his objections
7 to you?

8 A Yes, sir.

9 Q How much after?

10 A Oh, maybe an hour.

11 Q Okay. Now, what was Lt. Governor Barnes' response
12 to Commissioner Armstrong's objections that Blacks
13 were being diluted in their voting strength?

14 A Well, I don't think he agreed with him.

15 Q Well, I mean, you were there?

16 A Yes.

17 Q What did he ----

18 A Well, he did not agree with him.

19 Q All right.

20 A Of course, I don't remember all of the specifics of
21 the conversation.

22 Q I appreciate that.

23 A Obviously, he didn't agree with him, and he felt like
24 their strength had not been diluted, since their
25 district, in effect, was blacker than the one that

1 was there before.

2 Q Okay; and that was the reason he felt their strength
3 had not been diluted?

4 A As I recall, yes, sir.

5 Q Now, did the desire to enhance any particular
6 person's chances to be elected to the Senate take
7 any part in the way these lines were drawn?

8 A Oh, I think -- certainly I think it was minimal, I
9 think only with regard to one district, and that
10 was Senator Wallace's, who is an incumbent Senator.
11 We had been informed, and Senator -- of course,
12 Senator Jordan is running for Congress, and Senator
13 Grover is running for Governor, and we had been told
14 at that time that Senator Brooks was going to run
15 for Mayor of Pasadena, which only left one incumbent
16 Senator in Harris County, and certainly I think he
17 deserved some consideration, even though it was
18 minimal. Of course, he retained a good part of his
19 old district.

20 Q What about the possibility of enhancing the State
21 Representatives' chances of being elected to the
22 Senate; did that take any part in your ultimate
23 mind?

24 A Not in my mind, no, sir.

25 Q All right. Specifically I am speaking of Mr. Ogg or

1 Mr. Lammie, was there any desire on the part of any-
2 one that you know of that had anything to do with
3 this map to enhance their chances of being elected?

4 A No, sir, not anybody that had anything to do with
5 this map. Let me say I talked to Jack Ogg on
6 numerous occasions about Senatorial Redistricting
7 in Harris County, but I talked to several State
8 Representatives from Harris County who were desirous
9 of running for the Texas Senate; Sonny Jones, and
10 you can run a gauntlet of them.

11 Q All right. Did Mr. Ogg's or Mr. Lammie's name come
12 up in discussions with Mr. Bracewell?

13 A Yes, sir, I am sure they did.

14 Q All right. And was one of the things that Mr.
15 Bracewell was interested in the enhancement of
16 either of those two gentlemen being elected to the
17 Senate?

18 A I am sure it was; I am sure ---

19 Q Did he voice that to you?

20 A I am sure he did, yes, sir.

21 Q Do you recall it?

22 A I wouldn't say -- you know, it was not really Searey
23 Bracewell's map; it was the Houston Chamber of
24 Commerce's map; at least, that's the way I looked at
25 it. I don't know who drew the map they submitted.

1 Q Have you had the occasion to subsequently learn
2 that any of the White - non-White statistics you
3 relied on were mistaken?

4 A No, sir.

5 Q And it was, as I understand it, a desire on the part
6 of the Board not to dilute the Black percentage
7 from the side that it was in Barbara Jordan's
8 district?

9 A Yes, sir.

10 Q All right. And that would have been because of, at
11 least one thing, your understanding as a lawyer of
12 what the law required?

13 A Pardon me; I didn't get that, now.

14 Q Well, one of the reasons, as I understand it, that
15 there was a desire not to dilute the Blacks'
16 percentage in a particular district would have been
17 that the law, as you understood it, would require
18 that the dilution not occur?

19 A Well, I am not sure that that's necessarily the law.
20 I think it's certainly subject to interpretation.

21 Q Then, was the desire simply a moral decision on the
22 part of the Board members?

23 MR. McANIEL: That calls for a speculative
24 answer.

25 MR. BELKIN: I don't think so.

1 MR. McSABIEL: Well, you have indicated
2 that the Board was very concerned about Harris
3 County, and they did not want to dilute the Black
4 voting strength in a particular Senatorial District.
5 I don't even know how you define the word "dilute."
6 I think the question calls for a speculative answer.

7 MR. WILKIN: Well, we are using the term
8 he has used. If he doesn't understand the question,
9 I will try to clarify it.

10 Q When we first began, in fact, before I began, you
11 indicated to Mr. Eason that the Board was very
12 concerned about not diluting the Black percentages
13 in -- the voting strength in Harris County; right?

14 A I think that is a fair statement, yes, sir.

15 Q Okay. And I am asking you if anything ----

16 A As I recall, the map that the Houston Chamber of
17 Commerce submitted pretty well split the Black vote
18 up five ways. I think the Board was concerned that
19 there would be no discrimination in drawing the map.

20 Q All right.

21 A I know generally where the Black areas were in
22 Harris County when I drew the map, but let me say
23 this -- as you well know, being familiar with Harris
24 County -- they are significantly spread out.

25 Q Do you know from any of your conversations with any

of the Board members the reason that they desired not to split -- to dilute the Black voting strength?

MR. Mc DANIEL: I am going to object to the question. "Dilute" is not a subjective, or----

Q Have you ----

MR. Mc DANIEL: ---- is a subjective term.

Q As you have used the term?

THE REPORTER: I cannot get both of you talking at once.

MR. Mc DANIEL: Well, either the way you have used it or the way he has used it is calling on him to express an opinion. "Dilution" is a word you apply to a result once you have decided whether it exists or does not exist; it is pliable.

Q All right. Let's say reduce the Black percentage; was there a desire on the part of the Board not to reduce the Black percentage in a Senatorial District from that which it was in Barbara Jordan's district; is that a correct statement?

A I am not sure it is.

Q Well, I thought that was what you had said; maybe I am misled.

A I am not sure that -- I mean, the Board, no member of the Board specifically instructed me the way you just phrased your question, that we have got to have

1 a district that is or is not black or blacker --
2 you know, quite frankly, I didn't know what the
3 percentage, the black percentage, in Senatorial
4 District 11 was until after I finished the Harris
5 County map and ran a total on it.

6 Q But race was a consideration?

7 A Yes, sir, it was.

8 Q And it was a primary consideration in the map of
9 Harris County?

10 A I wouldn't say it was a primary consideration. I
11 would certainly say it was an important considera-
12 tion.

13 Q All right. Now, is there any particular reason that
14 what would be the most core, you know, the most --
15 the innermost part of the City, is divided among
16 three Senatorial Districts? I mean, is it -- let
17 me just leave that question as it is and get an
18 answer to that.

19 MR. McANULTY: Report it; I don't know what
20 it was.

21 Q All right. Is there any reason why the innermost
22 part of the City is divided among three Senatorial
23 Districts?

24 A The innermost part of the City consists of about
25 250,000 people; that is the innermost part of the

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1 City -- are you speaking from a geographical
2 standpoint or a population standpoint?

3 Q Well, let's say population standpoint.

4 A Where is the easternmost part of the City, then --
5 the easternmost part of the City has got 900,000
6 people in it.

7 Q All right. Then, would you say your answer for
8 dividing the easternmost part of the City ---

9 A Well, I am not ready to agree that I even divided
10 the easternmost part of the City.

11 Q All right. Let's talk about -- are you familiar
12 with the Black areas that exist in -- let me see
13 how I can do this -- (Drawing on map) -- the area
14 within the circle that I have drawn on this particular
15 map of Harris County, which we will attach to the
16 deposition?

17 A How many people are in that area that you ---

18 Q I have no idea; I mean, would you characterize this
19 as a substantially Black area, majority Black area?

20 A Again I want to say I am only generally knowledgeable
21 about Harris County, and certainly less knowledgeable
22 today than I was when I drew the map. Now, the area
23 you have drawn, first of all, I think it is very
24 important to know how many people that you have drawn
25 that circle around, and your question is, again, what,

now -- how many Blacks I think live in that area?

Q No; would you characterize this as a non-White area, a majority non-White area?

A I have no idea.

Q Okay.

A But there certainly are some Black centers of population within that circle.

Q But you did not, although the information was available to you, take the time to plot Black areas by census tracts before drawing?

A Yes, sir, I sure did.

Q In other words, you are saying there was a map you shaded by census tracts?

A You bet; and it was in my office when I drew that map.

Q All right. And that map that showed -- how did you do it; was it done by over fifty per cent and under fifty per cent non-White?

A It was done seventy-five per cent to a hundred per cent, fifty per cent to seventy-five per cent, seventy-five per cent to fifty per cent, and below twenty-five per cent.

Q All right. Below twenty-five per cent, twenty-five to fifty ---

A Yes, sir.

Q --- And fifty to seventy-five?

1 A Yes, sir.

2 Q And over seventy-five?

3 A Yes, sir.

4 Q All right. So you charted these figures ----

5 A I personally did not chart them.

6 Q All right.

7 A The staff of the Senatorial Redistricting Committee
8 did.

9 Q All right. You did that by hatching, cross-hatching,
10 shading, ----

11 A Well, they used colors.

12 Q Colors; all right. And you had that particular map
13 in front of you when you drew the Harris County
14 Senatorial Districts?

15 A Yes, sir, it was in my office.

16 Q All right. Mr. Spellings, did you also have avail-
17 able to you any election returns by either census
18 tracts or precincts for Harris County when you drew
19 your map?

20 A Well, I think that Mr. Nease and his staff had some
21 information like that. I didn't use it in preparing
22 that map.

23 Q All right.

24 A And it was not in my office.

25 Q All right. So you didn't rely on any election

1 returns; is that right? almost a bad example

2 A No, sir.

3 Q Okay. When you submitted your Harris County plan
4 first to Lt. Governor Barnes -- is that correct --
5 and then to the other members of the Board, or did
6 you do it all at one time, or what?

7 A I am relatively certain the Lieutenant-Governor saw
8 it first.

9 Q All right; did he state at that time that he
10 approved it?

11 A Well, I assume that he did.

12 Q If he had not approved it, would it have come back
13 to you?

14 A I am sure it would have -- not necessarily, though.

15 Q Before it went to any other Board members or not?

16 A I am not sure it didn't go to the other Board
17 members first.

18 Q Okay.

19 A I think that maybe what happened and probably what
20 happened was that I gave copies of it to the
21 Attorney General's staff before Barnes even saw it.

22 Q Was it revised in any fashion from the way you first
23 drafted it?

24 A Not to my recollection, it was not.

25 Q Well, at least in one regard it was, because Senator

1 Schwartz had a couple of census tracts changed?

2 A Oh, that's right.

3 Q But there were no other revisions that you know of?

4 A That's right.

5 Q The other thing that you had talked about when you
6 were dealing with the entire State was that you
7 started at one end of the State and started drawing
8 Senatorial Districts, you know, working your
9 population, and then you moved across the State.
10 With respect to Harris County, as I understand it,
11 you started with the core and used the core concept?

12 A Yes, sir.

13 Q All right. Now, will you tell us what you mean by
14 the core concept as a method of drawing district
15 lines?

16 A It means that you start with the most populous part
17 of the urban area and work outward from that point.

18 Q All right. Do you recall with sufficient clarity
19 to be able to work with an "X" what you remember
20 to be the most populous area in Harris County on
21 this particular map here?

22 A Well, I don't really think I could do that.

23 Q All right. After you finally found the most
24 populous area, that would have been by an examina-
25 tion of census tracts?

1 A Yes, sir.

2 Q In which direction did you move?

3 A I really don't recall.

4 Q Well, did you first take care of the contiguous
5 districts, that is, 17 and 7; in other words,
6 districts that included other counties?

7 A As I recall, I think probably the first thing I did
8 was take the census tracts that went into Senatorial
9 District 17.

10 Q All right. And what about 7?

11 A No, I started up in the middle then.

12 Q All right. You started in the middle, and you simply
13 started drawing what I would characterize as a broken
14 line?

15 A Well, it is obviously broken, because of the shape
16 of the census tracts, as I pointed out before.

17 Q Okay. But you --

18 A You have to follow -- or we didn't have to, but we
19 didn't have any smaller units broken down, so it was
20 absolutely necessary that I follow census tract
21 lines.

22 Q All right. But you don't recall whether you started
23 out going to the west, to the north, to the east, or
24 in what fashion you moved out from the center of the
25 City?

1 A I really don't recall; I really don't recall.

2 Q All right. Do you know of any ----

3 A Let me point out that this was the last thing that
4 was done on the map.

5 Q This was the last county drawing?

6 A That was the last county drawing.

7 Q All right. Do you know of any connection between
8 the drawing of the Harris County Senatorial Districts
9 and the drawing of the Harris County Congressional
10 Districts?

11 A I am not at all familiar with the Congressional
12 Districts; I had nothing at all to do with the
13 Congressional map.

14 Q Okay.

15 A I don't believe I have ever even seen the Congres-
16 sional map.

17 Q Do you know of any connection between the two?

18 A There was absolutely -- as far as I know, there was
19 none. The Congressional map was drawn by a Conference
20 Committee while the Legislature was still in session.

21 Q All right. Did you have the same instructions from
22 Lt. Governor Barnes with respect to Harris County
23 that you had had with respect to the rest of the
24 State; that is, to be fair and to, as closely as
25 possible, follow the one-man - one-vote rule?

A Yes, sir.

Q Did you have any other specific instructions with respect to Harris County?

A Well, I can't recall any other specific instructions.

Q All right. And in particular, I am speaking of the question of race?

A Well, you know, I would just be repeating myself.

Q All right; but that was a specific instruction from Lt. Governor Barnes?

A What was a specific instruction?

Q Whatever you would be repeating yourself on?

A All right; I will repeat myself. I think the Lieutenant-Governor and the Board -- of course, I can't recall what their exact language was or their exact instructions, I think they were particularly interested in drawing a map that was so discriminatory against the Blacks.

MR. NELKIN: That's it; thank you.

CROSS EXAMINATION - (Cont'd)

Questions by Mr. Steele:

Q Mr. Spellings, I am Clee Steele, representing Interveners in the Tyler case, concerned with re-apportionment of the House, especially as pertains to Blacks in Dallas County. Now, I think around the

beginning of your testimony you indicated that you began working on the plan at the instruction of and direction of Mr. Rameson?

A We are speaking now of the House plan?

Q Of the House.

A Yes.

Q Okay. And you had one other person, I think you indicated, working with you on that particular project; is that right?

A Well, primarily, I had one other person, Mr. Rousser; but, again, I relied on considerable help from the Attorney General's staff and from the Legislative Council.

Q Okay. Therefore, then, the Attorney General did know, in fact, that you had been assigned to work on this particular project?

MR. McANULTY: If I might clear that up -- everybody is in some doubt about this -- let me state for the record -- nobody has really asked the question to bring this out -- when Bob drew this map, there was somebody from our office there a lot of the time. I spent a lot of hours standing there in his office watching him, and we would talk about things as he drew them. He was doing the drawing and basically making the decision as to where the

line was going, but we were sitting there looking at him and agreeing as he went along.

Q Okay. With that in mind, let me be more specific: Did Mr. Crawford Martin know you had been assigned to this particular project that you were working on, a reapportionment plan for the House?

A I am sure he did, yes, sir.

Q When you finished that particular plan, did he know that you were the one who had drawn it?

A Well, I think, as Mr. McDaniel said, there were Attorney General staff people there almost all the time, but I feel like that he knew the majority of the work was my work, yes, sir.

Q All right. Did Mr. Bob Johnson know you had been assigned to work on the reapportionment plan?

A Yes, sir.

Q Did he know when the plan was approved that you were the one that had drawn it?

A Mr. Johnson helped me with some areas.

Q Your answer is "yes"?

A Well, yes, sir, he knew that I did the majority of the work, yes, sir.

Q Did Mr. Culvert know you had been assigned to work on this map?

A I do not know.

Q Do you think that Mr. Culbert knew you were the one that had done it when it was approved?

A I do not know; I had no discussion with Mr. Culbert.

Q Did Mr. Fisher, who is an eighty-year-old who worked with the Legislative Council, know you had been assigned to work on this project?

A I do not know. I am sorry, I don't even know Mr. Fisher.

Q All right. You have already indicated that Mr. Bower knew you were assigned to work on this plant.

A Yes, sir.

Q And he, of course, would know, then, after it was done and approved that you were the one that did it; is that not correct?

A Well, he would have known that I did the majority of the work. He did not participate in all of the decision-making, for example, one of the items that were done done in the Council -- I will go back to my example of Taylor County -- he was not present at that time, and I don't think he was present in the Council when the thing was put up for a vote.

Q He did know you were assigned to the project?

A Yes, sir, he knew I was working on it. He helped me to a great extent.

Q Would you say, were this likely, then, he would have

1 you were the one that had drawn it when it was
2 approved?

3 A Well, I think more than likely he would know that I
4 did the majority of the work, yes, sir.

5 Q And, of course, Mr. Barnes assigned you to that, so
6 Attorney General Martin, Mr. Johnson, Mr. Nease,
7 Mr. Armstrong and Mr. Barnes knew that you had been
8 assigned to work on a plan of reorganization for
9 the State of Texas, and they knew when that plan was
10 proposed, and when it was approved, that you were
11 the one that drew it?

12 A Well, I am not sure that all these people knew that
13 I was assigned the task of drawing the map, and I am
14 not sure ----

15 Q Well, we just went over that individually there, and
16 you indicated -- you said you didn't know about Mr.
17 Calvert and Mr. Fisher. Now, the others you said
18 knew you were assigned to that project?

19 A I didn't know that I had said that. I thought said
20 did they know that I drew the map ----

21 Q Well, can we ----

22 A ---- after it was all over.

23 Q Did Mr. Martin, Mr. Johnson, Mr. Nease, Mr. Armstrong
24 and Mr. Barnes know that you drew the map after it
25 was over?

1 A I think that those people -- did you name Mr.
2 Calvert?

3 Q No, I didn't.

4 A Okay.

5 Q Did he, also?

6 A No; if you did not name Mr. Calvert, I can answer
7 your question by saying that I think all of those
8 people knew that I did the majority of the work after
9 it was over.

10 Q All right. If Mr. Burns had instructed you to
11 draw a single-member plan for Dallas County, would
12 you have done that?

13 A Certainly. Let me say this Mr. Burns, speaking
14 for the Board.

15 Q Um-huh. One other thing: are you familiar with the
16 population of Dallas County?

17 A You are talking about just in terms of numbers?

18 Q Yes.

19 A Yes, sir.

20 Q What would you say the population of Dallas County
21 is?

22 A I think it is 1,342,000.

23 THE REPORTER: Would you give us that figure
24 again?

25 A 1,342,212, I think.

1 Q How many of that population would you say is Black?

2 A Oh, I have seen the figure and, you know, I was aware
3 of the figure at the time. I can't recall right
4 now; it would just be a guess on my part.

5 Q What would you guess?

6 A I would guess maybe twenty-five per cent, twenty per
7 cent.

8 Q All right. And in numbers of hundreds of thousands
9 of people, what would you guess -- would you say
10 250,000 people?

11 A Well, what is a fourth of a million-three?

12 MR. McANIEL: Cleo is trying to help
13 you a little bit.

14 A Maybe 250,000. I would just be guessing.

15 Q Okay. Assuming if Dallas were apportioned on a
16 single-member basis, how many districts do you think
17 would be Black, assuming the Blacks would be grouped
18 together in single-member districts?

19 A There are eighteen -- the population in Dallas
20 County entitles them to eighteen House members. I
21 think it would depend on, of course, where the
22 Blacks are -- live -- and whether or not they are
23 spread out throughout the county. It would just
24 be a guess on my part. If you assume that a fourth
25 of the county is Black, then, I guess you can assume

if it were under single-number districts, they would get a fourth of the representation, ----

Q Okay. And ----

A ---- which would be a fourth of eighteen.

Q In preparing your plan, did you have any contact with any Black elected official of Dallas or any other interested Black citizens as to whether or not they preferred multi-number districts or multi-number plan over and above a single-number plan?

A I did not. As I recall, I did not personally talk to any Blacks, but the Montgomery-Gomer did receive a telegram that was signed by the Reverend Sam Rains and Dr. Martin Luther King, and maybe one or two other people, and I was aware of that telegram. And in that telegram they expressed a desire that Dallas County have single-number districts.

Q Did you see the plan that was prepared by Oscar Murray and his staff?

A Just briefly.

Q Did you give it any consideration?

A You are talking about the single-number district plan?

Q Yes, sir.

A I was under instruction by the Board to handle Dallas County on an at large basis, so it wasn't a matter

of my giving any consideration to that plan. I was just working at the instruction of the Board, and the Board had already made a decision, as far as I was concerned.

MR. STEELE: All right; that's all.

Robert Spillings

SUBSCRIBED AND SWORN TO BEFORE ME on this the 10th day of April, 1972.

**Notary Public in and for Travis
County, Texas**

REPORTER'S CERTIFICATE

THE STATE OF TEXAS }

COUNTY OF TRAVIS }

I, Maria L. King, a Notary Public duly commissioned and qualified in and for the County of Travis and State of Texas, do hereby certify that pursuant to notice there came before me on the 30th day of December, 1971, at the Supreme Court Building of the State of Texas, in the City of Austin, Travis County, Texas, the following named person, to-wit, ROBERT WILLIAMS, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thoroughly carefully examined upon his oath, and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness; and that said deposition was to be thereafter submitted to the said witness to be by him carefully read over and subscribed and sworn to before any Notary Public and thereafter returned into court.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and, further, that I am not a relative or

REPORTER'S CERTIFICATE - (Cont'd)

employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this ____ day of January, 1972.

Maria L. King
Notary Public in and for
Travis County, T e x a s

Mitcher

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

AUSTIN DIVISION

CURTIS GRAVES, ET AL.

VS.

NO. A-71-CA-142

HEN GARNER, ET AL.

DIANA REGESTER, ET AL.

VS.

NO. A-71-CA-143

BOB BULLOCK, ET AL.

JOHNNY HARRIOTT, ET AL.

VS.

NO. A-71-CA-144

PRESTON SMITH, ET AL.

VAN HENRY ARCHER, JR.

VS.

NO. A-71-CA-145

PRESTON SMITH, ET AL.

APPEARANCES

Mr. David S. Richards, of Austin, Texas,

Appearing on behalf of Plaintiffs Diana
Regester, et al.

Mr. Robert S. Greenberg, of Dallas, Texas,

Appearing on behalf of Plaintiffs
Johnny Harriott, et al.

Mr. Mickey McGuire and
Mr. Nathan W. Kane, of San Antonio, Texas

Appearing on behalf of Plaintiffs
Van Henry Archer, Jr., et al.

APPEARANCES (Cont'd)

Mr. Stuart Nelkin

Of Houston, Texas,

Mr. David Berg

Appearing on behalf of Plaintiffs
Curtis Graves, et al.

Mr. Walter Irvin

OF HOUSTON, TEXAS.

Mr. Cleo Steele

Appearing on behalf of Plaintiff Intervenor
Washington, et al., in the Tyler case.

Mr. Ed Idar, Jr., of San Antonio, Texas,

Appearing on behalf of Intervenor in
the Tyler case.

Mr. E. Bruce Cunningham, of Dallas, Texas,

Appearing on behalf of Intervenor
Coard, et al.

Mr. Earl Luns, of Dallas, Texas,

Appearing on behalf of Defendant
ROY ORR.

Mr. Sam McDaniel, Assistant Attorney General
of Texas;

Mr. Al Curry, of the firm of Fulbright,
Crook & Jaworski, of Houston, Texas,

Appearing on behalf of Defendants.

.....

DEPOSITION OF ONE HUTCHER, a witness of
lawful age, taken on behalf of the Plaintiffs, Diana
Rogers, et al., in the above entitled causes pend-
ing in the District Court of the United States for
the Western District of Texas, Austin Division, pur-
suant to the notice heretofore issued and the agree-
ment hereinafter set out, before Opal Lonka, a Notary
Public in and for Travis County, Texas, at the Supreme
Court Building, in the City of Austin, Travis County,
Texas, on the 29th day of December, 1971.

(The deposition was taken in
accordance with stipulations as
to deposition of Crawford C.
Martin, as follows:

MR. RICHARDS: Do you want to consider,
Sam, that this is taken by -- I guess it is taken
pursuant to notice, inasmuch as General Martin is a
defendant, do you -- he is a defendant in some of
the cases?

GENERAL MARTIN: I am a defendant in some,
and not in some of the others.

MR. RICHARDS: I didn't know whether Sam
wanted to treat it just by notice, or how you wanted
it.

MR. McMANIS: I have no objection to
treating it as if it were taken by notice, and my
only thing is, I do want -- I am not going to waive

signature on them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And so we -- do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be absent in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master; is that correct, without proving General Martin's unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present General Martin's testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness?

MR. McDANIEL: That is correct. That is correct.

MR. LEWA: For the State Chairman, we do not waive our right to cross-examine him at the trial,

and in the event he should not be available at trial, we do not then waive the use of this -- if he is available, but is not placed on the witness stand, we don't waive our right to cross-examine him at the trial.

MR. RICHMOND: Well, let me be sure I understand. Suppose that General Martin is not called as a witness at the time of trial, what is your position with respect to the use of this deposition at the time of trial?

MR. LUNA: I reserve the right to examine him in person.

MR. RICHMOND: Well, then, at least you are giving notice from me that it is going to be my position that if you have questions to ask General Martin, you had better ask them today, because I will intend to offer this deposition as evidence at the time of trial, and you are then pursuant to notice, and at least you have the opportunity to examine him, and it will be my position, if you don't afford yourself that opportunity today, that we will offer the deposition as first-hand testimony.

MR. LUNA: I understand.

MR. RICHMOND: All right. Sure.

MR. LUNA: They can ask him some questions

1 today, but I am simply not waiving any of my rights
2 by participating in this deposition that I don't auto-
3 matically waive thereby.

4 MR. RICHARDS: Is there anybody else who
5 has got a position, attorneys who are present who
6 want to put any position of record in the case?

7 GUS NUTSCHER,

8 a witness named in the notice heretofore issued,
9 being first duly sworn in the above causes, testified
10 on his oath as follows:

11 DIRECT EXAMINATION

12 Questions by Mr. Richards:

13 Q Speaker Nutscher, my name is David Richards. I rep-
14 resent a portion of the plaintiffs in this case on
15 challenge to the reapportionment.

16 A Yes, sir.

17 Q My questions probably will be fairly brief and relate,
18 I think, essentially to the matter of the House plan.
19 You have already indicated you had your deposition
20 taken before, you know the purpose of it, and
21 realize that this will be perhaps even used in court
22 as a portion of the record in the combined reappor-
23 tionment cases?

24 A That is correct.

Q. We now have already had the disposition of each of the other members of the Legislative Redistricting Board over the last few days, and I think I will try to go directly to some of the matters. Did you participate in some of the public hearings of the board on the matter of legislative reapportionment?

A. Yes, sir, I think I attended each and every one of them.

Q. Were those any private or off the record or non-public meetings of the board, the board as such?

A. We had one or two that probably would be called work sessions, but otherwise, the meetings that I attended were either public or the ones held and briefed afterwards by the presiding officer, who was the Attorney General.

Q. Did you have members either of your staff or members of the staff of the House prepare any redistricting plans for consideration by the board?

A. Yes, sir, we tried to be a very active member of the board, and we prepared, I would say, approximately seven complete plans and modifications to either four or had about eleven different proposals prepared.

Q. Prepared by you or people at your direction, is that correct?

A. Yes, sir, people that was working at our direction.

Q Were each of the plans prepared by you as regards the issue of Dallas County, Bexar County and Tarrant County, did each of them provide for at large representation for those three counties, as you recall?

A That is correct. At large for Bexar, Tarrant, and Dallas.

Q Was that your position throughout the deliberations of the board, that those counties should be continued to run at large rather than either individual districts or---

A This was my position because I think this was the majority position of the present elected officials from those designated counties.

Q It was your position, first, is that correct?

A That is correct. I did voice one modification with respect to Dallas County more or less just as -- to initiate a thought.

Q And that was what?

A That it could possibly follow a pattern that was implemented in Harris County some years ago, and that is to give Dallas County the representation they were entitled to but have something larger than individual districts but less than running at county-wide.

Q Yes, I think at one time, I think there was a

1 newspaper story that you raised the possibility of
2 either six districts of three or three districts
3 of six, is that right?

4 A That's correct.

5 Q Did you mean that is a meeting of the board or was
6 it privately to members of the board, do you recall?

7 A My visit was with some members of the Dallas County
8 delegation.

9 Q I see. Did you find some receptivity to that propo-
10 sal among the members of the Dallas delegation?

11 A Well, it was kind of carrying forward some notes
12 and initial ideas that was advanced by members
13 of this delegation even as early as the first part
14 of the regular session.

15 Q So the Dallas delegation, at least, was receptive---

16 A Yes, sir.

17 Q --as far as--

18 A I was trying to work with all groups of the Dallas
19 delegation, including one or two of the senators.

20 Q So at least the Dallas delegation was receptive
21 to the notion of perhaps something in between at
22 large and individual member districts, is that
23 right?

24 A That's correct.

25 Q Did you ever thereafter, having discussed it with

the Dallas delegation, present this by way of a proposal to the Legislative Redistricting Board, either individual members of it or the board itself?

A Well, we drew these various plans, but since the overall plan would not fit into their plan, we didn't ever get that far, and as you probably noticed from the record, my vote wasn't on the prevailing side.

Q Yes.

A In this reapportioning plan.

Q I am aware of that.

A So in other words, our plans were tabled.

Q But at least plans that you or your staff, rather, prepared did envision at least alternatively that carving of Dallas into something less than county-wide, is that correct?

A Yes, sir, my efforts on the board, one, was to be active, and second, to eliminate what had apparently been spelled out as unconstitutional features of the bill drawn in regular session.

Q I guess the minutes of the board -- you actually made, I think, some presentations on -- of alternate plans during the regular sessions of the board or did you--

A Well--

Q --seek only to delay the Board's findings?

A --on the House board my motion was to postpone further consideration until the next morning, with the idea that we had drawn a substitute which was not one of the original plans that we had offered, but we drew one trying to interpret the guidelines acknowledged by the majority members of the board, and guideline, gentlemen, is a very key feature in drafting reorganization. Each one of us here could draft, in my mind, our own separate proposals, but if we didn't start with the same guidelines, we would even be further apart than if we used the same guidelines.

Q That plan that you wished to present to the board or wished them to delay their consideration so that they could consider, is a copy of that available, do you know, among either your papers or the papers of the board?

A I would have to check with my reorganization chairman, because I think I turned most of this material over to him, and his office has it.

MR. RICHARDS: Mr. Curry, would you mind making a note to check here, and if a copy of that is drawn up to employees salaries and payroll and plan is available, could we just attach it to the deposition?

Q MR. CURRY: Yes.

Checklist attached and filed of this issue.

A The guideline, if it's helpful, that we used, was to give an individual county the representation that they were, one, entitled to, and second, was the surplus for a designated county. I think we may have been a little more liberal in our utilization of the surplus than the present plan.

Q Let me ask you this. Did -- what matters concerns me about the Supreme Court decision of the Texas Constitution is how one treats the surplus when -- after you allocate to a county these representative seats to which it is entitled. Did you allocate the surplus into a single district or did your plan at some points divide counties three directions?

A I think in some cases it became necessary to divide the surplus in more than one direction. I think Brasoria County may have been an example. I am stating this without reference to a map, I hope you understand. But see, if your neighboring counties are all pretty close to having individual representation, and you have one like Brasoria County that has a surplus of, I believe approximately thirty thousand, if you send all that in one direction it would probably make that district too large; so I believe there were several cases throughout the state that you might almost say it was imperative

to utilize a surplus in more than one direction.

But I do think there should be a reason to support this utilization in more than one direction. Otherwise, we tried to put it in one direction.

Q Historically, you were chairman, I believe, of the committee that reapportioned the House in 1965, is that correct—

A Yes, sir.

Q —Is that accurate?

A I had the pleasure of the interesting responsibility to implement the initial Baker v. Carr for the State of Texas. That was to my mind the federal landmark case.

Q And what precisely was your role at that time with respect to the reapportionment plan that was drawn in 1967?

A Well, I was the chairman of the Congressional Legislative Redistricting Committee under Speaker Barnes at that time.

Q That was the House committee, is that correct?

A That's correct.

Q Was that plan ultimately drawn by a conference committee of House and Senate conferees?

A No. The pattern was basically this. The House had to accept basically complete responsibility for the

direction of the House reapportionment plan. The Senate was accepting basically complete responsibility for the Senate reapportionment plan. The Congressional plan was a conference committee report.

Q Were you on that conference committee?

A Yes, sir. For those who worked within the process, I think understand the distinction that must be made in the pattern of both bills.

Q Yes. Well, I think what you are really saying is that there has been a tradition honored, as I understand it, that with respect to reapportionment, the House in effect reapportions itself?

A Yes, sir.

Q The understanding to be that the Senate will not intrude itself into that matter, is that correct?

A This is not treating it lightly in the halls of legislation, because here is an issue that every House member is vitally concerned with.

Q But the notion was and---

A That's right.

Q ---still is, I take it, that each house in effect decrees its own apportionment, and the assumption is, unless there is something flagrant about it, the other house will go along?

A I think this is correct, and the point that I

underline as being important, I think a House member should be -- I presume that an elected official has not only received a majority of votes, but that he is going to do everything he can to represent the majority of the people in his district and that when he speaks for his district, we are keeping the reapportionment close to the people.

I had to give you that little extra handling because you saw some bills, some bills come sometimes by the news media stories, you never get that impression that I was that concerned about redistricting, the final aspect -- the finest aspects.

Q You did not join in either the Senate or the House on the passage of the bill of the redistricting board?

A I cast a negative vote on both the Senate reapportionment bill and the House reapportionment bill. I voted against the bill.

MR. RICHARDS: I think that is all I have.

Questions by Mr. Barry:

Q David Barry, I represent Curtis Graves in Harris County. Do I understand you to say that you voted against the Harris County reapportionment map that was drawn by the board?

1 A No, we didn't get any direct votes on any of the
2 amendments. I did vote against the proposal that
3 was adopted by the board.

4 Q I am going to give you an example of that map.

5 Nathan, can I bother you again for that?

6 Is this the map you have reference to,
7 Mr. Netscher?

8 A This is on Senate redistricting, now.

9 Q Yes, right. We are just concerned in my area on
10 the senatorial redistricting.

11 A I voted against the final passage of the Senate
12 redistricting proposal that had this as a feature of
13 the bill -- of the plan, rather.

14 Q And we are referring now to the -- what is presently
15 the Harris County senatorial districts. Mr. Netscher,
16 you spoke about guidelines a moment ago.

17 A Yes, sir.

18 Q What guidelines did you follow, what makes a good
19 senatorial---

20 A Number one, I think all of us ever since Baker v.
21 Carr has become the law of the land, that population
22 is the number one factor in my mind.

23 Q So without regard to any other factor, evenness in
24 numbers of people represented?

25 A I think that that was probably the number one feature.

Q And then what other factors?

A I think from there comes community of interest, compactness, and of course, the districts have to be contiguous. But the real other big point that gets into personality argument so much in redistricting is the fact that most all who work in drafting are seeking what is the appropriate guidelines.

I have experienced in my reapportionment one time where I went with the federal case law too strong, and we were struck down in the state courts by saying we overruled the state's constitution, and this is why I said a while ago that my interpretation is probably a little bit more liberal than the board's is because we were instructed, working with House members is trying to interpret federal case law, but you also have a responsibility to the state constitution. And for you and I to ascertain what is the guideline to use leaves us kind of somewhat on a tightrope.

Q Is there...

A ...and so really the difference of opinion is re-districting -- what I am trying to say, most of them are completely reasonable. It is just what is the guideline to be used. But I listed the criteria that I basically took into consideration.

Q Is there anything else of paramount interest that you used as a guideline, or are these the primary goals?

A No, I think another one I list is interests of the people, and the next one is interests of spokesman for the people being the elected representatives.

Q Does that mean you went through the -- or you would be more inclined to listen to the presently elected representatives of the people to see what the people of that district might favor?

A I mean back on this point here when we say that I have a concern for the people, you will find in the minutes of the House Redistricting Committee this time that starting back in the early part of the regular session, I challenged my redistricting committee to go to all sections of Texas to give the people an opportunity to express their viewpoints in advance, and they did this, and I think this is so vital, I think it is very important.

Q You were opposed, I take it, to Harris County senatorial districts presently drawn, or at least, you voted against it?

A I voted against the overall senatorial redistricting plan. I --

Q What are your objections to that plan, sir? I didn't

Q I think to cut you off, did you have more to add to
A what I said?

A No, I was going to say that my work on Senate redistricting was aimed at how to furnish information to the Legislative Council and to the Lieutenant Governor's office.

Q And did you do that? A Yes, sir.

Q Now, sir, the record here is that as we acknowledged in testimony of the previous gentlemen, that Senate redistricting is generally put in a package by the Senate and the presiding officer, and as a general pattern, the House recommendation is put together by the House and its members. So I really did not interfere in the House business. I don't tell you the makeup, only within a reasonable degree, of the districts here. I didn't study the petitions, didn't know the lines and things of that nature.

Q Did you voice your opposition to this plan, your basic reasons why you were opposed to this plan, to anybody on the board, Mr. Wetzel, or to anyone at all? A I am trying -- I want to know why you voted against it; what principles did it fail to meet? Q Now, I had none -- I think I had more objections advanced to some House members in the Pullman-Port Water area. My one big complaint about it was the

fact that objections raised in McManis-Ahileme
are—

Q To the Harris County?

A No, I am talking about the overall Senate plan. I
did not take a vote on this proposal, nor did I
voice any objection per se, and on the other hand,
nor did I have anything to do with the actual draw-
ing of these lines.

MR. CUNY: Now you are referring to the
senatorial districts in Harris County?

A In Harris County per se.

Q So it's safe to say that as long as it was okay
with the Senate, it was okay with you that this plan
be passed, the Harris County plan?

A Well, and to go one step further, when I saw this
proposal it had three signatures of the members of
the board, so it was really not an assignment for
me to work on other than to say, well, I wanted
to vote for it or against it, and I voted against it.

Q Do you have any objection to the way the Harris
County senatorial districts have been drawn?

A I haven't evaluated it on the pluses or the minuses.

Q If you were told that the Harris County plan as
presently drawn incorporates at once in one district,
specifically the 15th, the wealthiest area, perhaps

one of the wealthiest areas in the United States, River Oaks, which I take it you have heard of?

A Yes, sir.

Q And where most Fulbright lawyers live. And a ghetto area incorporated in this oddly shaped section, would you -- if that fact were true, sir, would you consider that this particular district violated your standard that each district have community of interest?

A I would have to stay with the fact that community of interest should be a factor to consider. Now, what percentage, what is the makeup of these districts, I couldn't testify, I don't know.

Q You are not familiar enough with Harris County to tell us anything about these districts?

A I think I remember from our initial pattern where we had Harris County divided into three districts, I could tell kind of from the makeup of your Congressmen, from the makeup of your House seats, something of the philosophy, but as far as individual makeup, I --

Q All right, well, I can cut this short by asking you, did you consider any of your own guidelines and -- did you take your own guidelines and superimpose those on the Harris County?

A No, sir.

Q And you didn't draw any maps for Harris County?

A I drew no maps for Harris County; I drew no maps for Senate redistricting.

Q But most of your objection was -- to the Senate plan was to some other area -- I think you said Abilene or--

A Abilene and the Waco area--

Q Waco area.

A --basically, and I might say this, the objections of my local senator, which is very practical from the fact that I still represent a district and people in the State of Texas.

MR. BURG: Okay, Mr. Nutscher, I appreciate it. I can't get anywhere with you. Thank you.

Questions by Mr. Eason:

Q We met a few minutes ago. To refresh your memory,

I am Nathan Eason from San Antonio, and I represent Van Archer and others, and we are contesting both the House and the Senate redistricting plans.

A Yes, sir.

Q Mr. Archer is the Republican County Chairman from there.

A Yes, sir.

Q Now, Mr. Hatcher, I will try to be brief. Now, when you were first shown the finalized plans, did I understand you to say a moment ago that they were on work I viewed almost not done on work I already had three signatures on them?

A Yes, sir.

Q And how long would this have been prior to their approval? By that I mean October 15 in the case

of the Senate and October 22 in case of the House,

I believe, both this year.

A Oh, I would imagine six to eight hours.

Q That would be your first view of the finalized plans prior to—

A Yes, sir.

Q —each plan's individual adoption?

A I would say there was a difference — I would say the six to eight hours I have reference here to

the Senate proposal. The House plan, naturally we

probably spent more time on the — much more time

on the drafting part.

As far as the Senate proposal is concerned,

we were funneling information, thoughts, views from

telephone conversation, correspondence, ideas, to

the Legislative Council and to the Lieutenant

Governor's office, since they were in our mind the

right place to be supervising the drafting of Senate

reapportionment. And this is not to take away or minimize the role we play or the responsibility of any member of the board. It's just on every problem somebody has to have the grouping of the notes and apply them to the drafting board, drawing board.

Q Who, to your knowledge, did do the drafting of the two plans, if you know?

A I think the Senate proposal was put together by the Lieutenant Governor's office, with the assistance of the Legislative Council, and the legal assistance of the Attorney General's office.

Q And the House?

A I think this was put together basically by the same pattern, although it was probably many more proposals drawn with respect to House reapportionment than with respect to Senate reapportionment.

Q And when you say Mr. Barnes' office, you are speaking of the Lieutenant Governor himself and Mr. Spellings and Mr. Mooser, or do you know those gentlemen?

A Yes, sir, I know the gentlemen.

Q Are you speaking of those two in conjunction with Lieutenant Governor Barnes?

A Yes, sir.

Q And I further take it that your testimony is that

you did not draw up or cause to be drawn up any of the lines involved in either of the two proposals as passed?

A I would prefer we would divide them a little bit. I don't--

Q All right, sir.

A I did not even attempt, as I said earlier, to draw a Senate reapportionment plan. I advanced the ideas that came to my office. I offered assistance and tried to be an active member, but I acknowledged primary responsibility for the Senate redistricting plan was with the senators and the presiding officer of the Senate. The House was a little bit different.

Q Was your advice sought by the one that did draw the lines as concerning your ideas of the drafting of the lines and the creation of the districts?

A I would say a certain part of the ideas that I recommended for Senate reapportionment was implemented. I would say that a certain amount of it naturally wasn't, because I voted against the proposal. I was not completely satisfied with the Senate redistricting bill or else I would have voted for it.

Q Did they free time to time -- by that I mean Senator Barnes and his staff or General Martin and his staff --

1 come to you asking questions concerning your ideas
2 as regards to certain districts?

3 A I think I saw one or two rough plans before we ever
4 got down to the final version.

5 Q Well, did they ask you for your ideas or criticism
6 or suggestions regarding these---

7 A The avenues at that time were open, yes, sir.

8 Q Sir?

9 A Yes, sir, the avenues were open at that time for
10 suggestions.

11 Q Did you make suggestions and recommendations?

12 A I made several, yes, sir.

13 Q Were they incorporated in the final plans?

14 A Some of them were, and then again, some of them
15 weren't.

16 Q Speaker Nutscher, if you recall -- now, you had the
17 Senate plans presented to you, as I recall by your
18 testimony, six to eight hours prior to its final
19 passage?

20 A That was the final version, yes, sir.

21 Q How long did it take you, as near as you can recall,
22 to negate the plans or to cast your vote against
23 them?

24 A I think after a couple hours I pretty well reached
25 an idea that I would vote against the proposal

unless it was changed.

Q Now, this may have been covered to some degree, but in any event, bear with me because I didn't understand it.

A Be glad to. They say you are very kind.

Q Now, in the Senate -- we will separate the two now. In particularity, in that two hours, then, what specifically did you find against this Senate re-portionment bill that caused you to vote against it?

A Well, one, I was not satisfied with the district from West to Abilene.

Q Yes, sir.

A Second, the disruptions of the senatorial district in a section of Texas I am very familiar with, primarily Senator Patman's district.

Q You are from Granham, aren't you?

A Yes, sir. And I think that a much better pattern could have been worked out in the West Texas-Abilene area, which is presently represented by Senator Nelliff, and the people in that area, without some of the objections being advanced from some of the metropolitan areas, and since I had no part in drawing the lines within those counties, the -- I decided to vote against the proposal.

Q I take it, then, that your reasoning, of course,

based specifically on these particular things, but would this also include the fact that you felt they had not met the constitutional requirements and the state requirements -- and/or the state requirements -- in regards to the redrafting of the senatorial districts?

A I was probably more baffled as to the guideline that was being used than as to passing judgment on its merits in its final form, should I say. I was in search of a guideline that was going to be used.

Q Well, now, I copied down what I considered -- what I understood you to say were your guidelines, which were, one, population?

A Yes, sir.

Q Two, community of interest; three, compactness and contiguity; and four, the interest of the people, together with their spokesmen of the people, which would be their elected officials, I suppose?

A Yes, sir.

Q And -- well, I believe that is where you stopped. Pardon me. Go ahead.

A No, I was just going to add the reason I added the latter, I don't know -- I have read a lot of case law and I haven't ever found the latter mentioned -- I want to acknowledge that -- but as a presiding

officer, I think it is a good trait for a presiding officer to be concerned about the wishes of the spokesman of the people, and that is the reason I put it in as a criterion that I personally acknowledge

Q For the purposes of our little discussion here, I don't disagree with you, but I simply want to know

what motivated your decision to not approve of the plan. Number one, was it personal, or number two, was it that you felt that the committee or the board did not follow the guidelines?

A As I said, I don't -- I was a little baffled on the guideline that was used. I do think that -- I voted against it because I thought that my objections outweighed my satisfaction to the bill. That's the best way I know to put it.

Q Well, it's a little hard for me to understand -- and I don't want to belabor the point. Would you say it was for personal reasons, then?

A Not in a personal sense, in that I had -- I didn't even have that much personally involved in Senate redistricting other than try to do a good job as a member of the board and be an active member, so this is what I was, so it would have to be on the criteria, I would think.

Q All right, sir. Then it would have been that you

felt that they did not follow the constitutionally required guidelines, is this correct?

A Well, I think maybe a better bill could have been drawn within the framework of the guidelines that I thought should be considered.

Q And when we say the guidelines that you think should have been considered, in order to clarify this, we are talking about the population, equal population?

A Right.

Q The community of interest, the compactness and contiguity?

A That's right.

Q And the interest of the people?

A That's right.

Q Mr. Matscher, are you a lawyer?

A No, sir.

Q Now, you have of course read, as you indicated, numerous of these decisions and the laws as handed down by both the federal courts and by the state, is this correct?

A Yes.

(Discussion off the record)

Q Did you in your consideration of the plans and your interest, activity on the committee, did you rely on the Attorney General, Attorney General Martin,

1 for legal help or advice concerning constitutionality
2 or the legality of the plan that would be drawn?

3 A He acknowledge the Attorney General's office as
4 the arm to furnish the legal advice.

5 Q Well, did he from time to time advise or did he at
6 the time the plan was submitted on the Senate --
7 I will try to separate the two -- did he advise you
8 as to the constitutionality of, the legality of the
9 plan?

10 A Yes, sir, I think that he made the statement that
11 it was a plan that would in his mind be acceptable
12 and constitutional.

13 Q You made mention a while back about -- I forget the
14 way it was phrased, but someone in your office. Did
15 you have a committee or a staff or a person or
16 persons working with you assigned by you from your
17 staff on this redistricting?

18 A Yes, as we go from Senate into House, on House redistricting, we did. I had House members assisting me
19 in the drafting of I think seven statewide proposals
20 plus four additional modifications; about eleven
21 plans were drawn.

22 Q Now, you talk about House members; you are talking
23 about elected officials--

24 A Yes, sir.

Q --from various sections of the state?

A Yes, sir.

Q I meant principally, though, of your own staff, did you have anyone in particular that was working on it?

A No. My staff tries to be helpful to House members whenever they want help or they need maps or they need an adding machine if we have one available, that kind of stuff, but the work was--

Q But not assigned directly to this particular chore?

A No, sir. I worked with the Legislative Council on it.

Q Yes, sir.

A Mr. Johnson and Mr. Potter.

Q Do you of your own knowledge know who actually drafted, we will say the Senate redistricting map?

A No.

Q In its final form?

A I think it was drawn in the Lieutenant Governor's office, some of the staff members assisted him, and the work of the Legislative Council.

Q In other words, possibly in conjunction with Mr. Spallings, Mr. Wooster, and Mr. Johnson and Mr. Potter or whoever helped in that office, is this it?

1 A Yes, sir, yes, sir.

2 Q And when you were first presented a House plan,
3 when and where -- I know when -- where did this
4 occur and who was there?

5 MR. CUNNINGHAM: Which plan are we talking
6 about?

7 MR. EASON: We are still on the Senate.

8 MR. CUNNINGHAM: I did not understand.

9 A I think the Senate redistricting plan was presented
10 to my office one afternoon, and I really don't re-
11 member who brought it by, Robert Spellings brought
12 it by and gave it to Rush, who in turn gave it to
13 me, and then Robert came back and visited with me
14 in the office and said that they had come up with
15 a complete package together, and that it had the
16 support of at least three members of the board,
17 and the chairman was going to call a meeting for the
18 next morning at a certain time.

19 Q And it was already signed by Attorney General Martin,
20 Lieutenant Governor Barnes, and Mr. Calvert?

21 A This is the way it was explained to me, yes, sir.

22 Q Well, I mean were their signatures on it?

23 A No, I didn't see any signatures. I had heard that
24 these three members of the board had approved the
25 plan or would support the plan, however you want

to phrase it.

Q I am going to show you the Texas Senate Districts as enacted October 15, 1971. This of course is the plan, the map of the plan that was presented to you, is it not, as near as you can recall from your memory?

A This is the board's plan.

Q This is the one that was approved and you refused to sign; is this correct?

A That's correct. That's correct.

Q All right, sir. And you mentioned specifically, I think, the McLennan County west?

A Yes, sir.

Q And I think something -- Senator Patman's district down there?

A Yes, sir.

Q Did you take any note of Senatorial District 21 at the time?

A Not expressly, no, sir.

Q I will call your attention---

A No more than the fact that I know from previous reapportionment plans that Bexar County would be entitled to two senatorial districts, which I thought they should have, which they did receive. As far as how the surplus was treated, I can't testify to,

because I played no part in the drawing of those lines.

Q You had been enough to convince you that it wasn't acceptable to you after viewing the -- would that be the 14th which you took exception to?

A Twenty-fourth, eighteenth.

Q And the eighteenth?

A And thirtieth.

Q Yes, sir. I will ask you at this time -- now, you have previously worked on redistricting plans, and you have explained the criteria pretty much what the court set out. I will ask you, based upon your work, your experience, your knowledge, your serving of the people of the State of Texas and from your district, whether or not you have an opinion concerning the compactness and the contiguity of Senatorial District 11. I want to call your special attention to the northernmost boundary of this district, which is possibly set out a little better in this blown-up inset which comes around 19 and 26 and takes in the northern part of Bexar County, together with Alamo Heights and Terrell Hills, the northeastern part of the City of San Antonio.

A I am not -- I wouldn't say I would have done it the same way, and yet I am not in a position to criticize

1 because I don't know the census tracts, if they
2 tried to stay within city limits or if they went
3 out of city limits and things of that nature.

4 Q All right, sir. Are you familiar with the City of
5 San Antonio?

6 A I do know that that is -- I just couldn't say whether
7 I would have drawn it in that fashion or not.

8 Q Now I will ask you -- I have a tendency to go too
9 long on these questions. Let me be a little briefer.
10 Do you consider this to be a compact and contiguous
11 senatorial group -- senatorial district?

12 A Well, I would imagine maybe 17 and 26 would argue it
13 is, but 21 would be a question mark. I don't know.

14 Q Let me ask you this.

15 A I was not compiling the testimony for senatorial re-
16 districting, and I would like to be as much help to
17 you as I can, but on Senate redistricting I tried
18 to be an active member but I did not offer the
19 leadership, nor was I part of the pattern of drawing
20 it, putting it together in that respect.

21 Q Yes, sir. I understand that.

22 A So I was more or less a voting member with respect
23 to Senate redistricting.

24 Q I understand that too, but by the same token, I
25 think that you are, certainly by your experience and

1 qualifications, I believe that you are familiar with
2 redistricting, and as you have pointed out, one of
3 the guidelines is compactness and contiguity?

4 A Yes, sir.

5 Q Now, if you were to take a central point of the
6 31st senatorial district, could this not have been
7 made more compact by going straight north into, say,
8 Senatorial District 19 than going around 19 and 26
9 and coming in on the north and northeast part of
10 Bexar County?

11 A Yes, sir.

12 Q It would have been more compact, would it not?

13 A I am sure it could have been argued that way.

14 Q Are you familiar with the northeast part of San
15 Antonio -- let's say Alamo Heights and Terrell Hills?
16 I understand that this would be a degree, but I
17 mean do you know where they are?

18 A Yes, sir, I think I know where they are, but I
19 don't -- I couldn't testify to the overall makeup
20 or philosophy. I think that is probably more of
21 a conservative type area. I am not that familiar
22 with it.

23 Q Yes, sir. Well, I might just for clarification here
24 say that they have a Republican County Commissioner
25 and a Republican Justice of the Peace.

1 A Yes, sir. And here again the House members, you
2 know, have been running at large in Baxter County.

3 Q This is true.

4 A So I am not familiar with the divisional aspects of
5 Baxter County to testify, especially as to fairness,
6 of my own mind.

7 Q Well, assuming what I have told you---

8 A But I have never heard any terminology used of
9 trying to gerrymander or discriminate this district
10 but I do acknowledge it could be drawn different.

11 I remember I had some boys from the Valley here who
12 violently objected to the dividing of Duval and Jim
13 Wells County in this particular area---

14 Q Well, with the---

15 A ---and I have some people from this area who would
16 have preferred to, say, stay with the 18th, but I
17 do know when you take something out of a district,
18 you have to add something back, and I wasn't that
19 close to the drawing board on Senate redistricting.

20 Q Well, Speaker, for the purpose of this discussion,
21 we will -- I will be frank to admit to you that we
22 could work on this until doomsday and there would
23 certainly be certain people that would be dissatis-
24 fied or unhappy with a particular district as it
25 might be drawn.

1 A Yes, sir.

2 Q Because it can affect personal reasons and so forth.

3 I am simply trying to stay within the guidelines which
4 you have already stated that you followed and should
5 be followed.

6 A Yes, sir.

7 Q Now, with the premise in mind, assuming what I have
8 told you is true about the Republican County Com-
9 missioner and Republican J. P. and the fact that
10 this is a -- I forget the word, but a rather affluent
11 area of San Antonio, would you consider that this
12 northern part of this district has a community of
13 interest with, say, the people in Starr, Deval, Jim
14 Hogg, Zapata County?

15 A No, I would say you could acknowledge a distinction
16 there.

17 Q That they would not have a community--

18 A Yes, but I think we also have to acknowledge that
19 any time you take a surplus from a metropolitan area
20 and tie it with a rural area, that you do have some
21 problem there.

22 Q You would run into--

23 A Yes, sir.

24 Q --some distinctions, wouldn't you?

25 A Yes, sir. I remember the time on the Congressional

when you had San Antonio going to Odessa and the Midland area, and we had this same argument.

Q Yes, sir.

A But I still stay with my guidelines because in Houston we were supported by the fact that Mr. Bush and Mr. Archer were well pleased with the work that I had done on their redistricting in that particular county. So I want you to know that I, from my point of view, I do try to implement the guidelines that I mentioned the best I know how.

MR. KASCH: I believe that's all. Thank you very much.

Questions by Mr. Cunningham:

Q I am E. Bruce Cunningham. I represent Councilman George L. Allen, School Board Trustee E. J. Conrad, and Representative Sam W. Holmes, who are plaintiff intervenors, and we are concerned with the House redistricting plan.

Did you receive a letter from Representative Holmes asking you to vote for a single member plan for Dallas County?

A I think I did.

Q Okay.

A Yes, sir.

Q Did you receive a similar letter from Councilman George L. Allen asking you to vote for single member districts?

A I would have to check, but I believe I did.

Q And also Doctor Conrad?

A I don't know, but there again, I could have, yes, sir.

Q Well, did the board at any time consider a single member plan for Dallas County -- the Texas Redistricting Board is what I am talking about.

A No, sir, I think the only redistricting single member plan that I saw for Dallas was back during the regular session.

Q Okay. Did Senator Oscar Maury in one of the public meetings offer a single member plan for Dallas County?

A He testified for single member districts, and whether he had one reduced to a plan on the map, I am not sure. It seemed like he did, but I know he did come before us and testify in behalf of single member districts for metropolitan areas.

Q Did you receive a plan for single member districts from a student at the University of Texas at Arlington, probably the day before -- I think the day before you signed this -- four of them signed this

bill?

A Yes, sir, I think we got one from Arlington.

Q Okay. I didn't -- maybe I missed your answer.

What were your reasons for not signing the House redistricting plan that was adopted by the other four board members?

A I opposed the plan, one, because I felt that it had deviated, one, too much from the wishes of the majority of the members of the legislature. Now, you kind of have to put yourself in the presiding officer's position to appreciate this, because prior to the drafting of all our proposals, I studied the minutes, the requests and the wishes of the members of the House, even those that had opposed me or had opposed the plan that we initially planned.

My purpose on the redistricting board with respect to House redistricting was made public, and that is that I wanted to cure the objections that the court had advanced against the initial bill that we passed during regular session, and you know the House did pass a plan, whereas the Senate did not. But I wanted to cure these objections, and these objections basically hinged from the pattern in Midland, Midland County, Grayson County, with inconsistencies in the Panhandle and the Valley. These

were the five major points. Then of course there were debates raging with respect to metropolitan areas. Now I think I agree -- I think I think

for whom the bill made my position clear that I thought a single master would probably be better in Houston than to run Harris County at large, but I did think for the best interest of Harris County, some type of district larger than individual but less than at large would be for the best interest of Houston and best interests of Dallas. Now here, these two things were not bigger than Houston for the simple reason that they have got more people waiting for them. This is one of our problems in this area.

It is not the most one, in addition to going against the wishes of the members, I think if the plan was not for the best interests of the majority of the people, and there were definitely unnecessary pairing of incumbents involved in the bill. There may not be in line with the initial criteria; they are not quite practical aspects of redistricting. You may call these administrative arguments rather than constitutional or legal arguments but they were practical points, and as presiding officer, I could not in good faith vote for a proposal that I thought was not compatible to these collations, plus the fact

1 that I think we had drawn a proposal that was really
2 better than the one the heard adopted.

3 Q If a proposal had been drawn for Dallas County that
4 included single member districts and with your other
5 suggestions, would you have signed it?

6 A I am not -- have not been an advocate of single member
7 districts. I have been a strong advocate of trying
8 to keep the people close enough to its representa-
9 tion and be able to acknowledge a reasonable number.

10 In other words, I kind of like the pattern that we
11 had working in Houston ever since we implemented
12 Baker v. Carr, and this has not been struck down by
13 any court that I know of at this time, and I think
14 the type of representation that we had, we could say
15 that we were not really discriminating against any
16 group of people in our state, and certainly I wouldn't
17 want any part of any plan that was designed for that
18 purpose.

19 MR. CUNNINGHAM: Thank you, Mr. Speaker.

20
21 Questions by Mr. Greenberg:

22 Q Mr. Speaker, I am Bob Greenberg, and I represent the
23 plaintiffs, Johnny Marriott et al. in the Dallas
24 case insofar as the House is concerned.

25 Do I understand from the answers that you

have given that while you did not sign or approve the House plan as adopted by the redistricting board, the reasons for your refusal to go along with it did not relate to the fact that metropolitan areas other than Harris were drawn in multi-member districts.

A That would certainly have to be one of the arguments.

MR. CHAMBERS: I think that's all. I think everything else has been covered. Thank you, sir.

CHIEF EXAMINATION

Questions by Mr. Lums:

Q Mr. Speaker, I am Earl Lums and I represent Ray Orr, the State Democratic Executive Committee Chairman, who is one of the defendants in this case.

I would like to ask you, based on your many years of experience in the legislative halls, if there aren't many arguments and reasons to vote against

a piece of legislation other than a constitutional reason?

A That's correct.

Q So then within the framework of the constitutional guidelines, there are often bills that might be desirable to one person and undesirable to another, although both might be constitutional, is that

1 right?

2 A That is correct. I might acknowledge that this is
3 a role that I am probably the majority of the time
4 pushing for and defending a proposal that was passed
5 or had to be passed, and my situation is somewhat
6 different in this case, but you are absolutely in
7 my mind correct in saying that you can -- there are
8 other arguments rather than just constitutional
9 ones for opposing a piece of legislation.

10 Q And would it be fair to say that your reasons for
11 not signing these bills were for reasons other than
12 constitutional reasons?

13 A Well, the only point that I mentioned today that
14 when I voted no, I made it publicly, and they asked
15 me about the constitutional question, and I said
16 I thought there could be a serious constitutional
17 question raised, but that I didn't know if I would be
18 joining in any suit because I didn't know how much
19 time I would have to develop that argument.

20 I gave at that time two points, I think
21 the El Paso situation could be questioned, and I
22 think you have got the consistency argument also to
23 look at.

24 Q But if a constitutional question was to be considered,
25 the constitutional question was not per se single

number districts versus multi-member districts?

A That is correct, and I don't know of the court ever
 looking down on it large over the situation we
 want in Georgia. As a practical one for business

Q Mr. Speaker, I believe we passed here plans that
 we completely have in the present law, as well as in
 the law now that the house adopted, 110 districts
 in the House of Representatives at Texas, is that
 correct?

A Yes, a hundred and fifty members, yes, sir.

Q A hundred and fifty members, and of those hundred
 and fifty members, how many of them are elected from
 single member districts, as opposed to multi-member
 areas districts, as you know them?

A Big wave back and forth, is pretty well equal. Now,
 you have got members, as will have 11, and Dallas,

as will have 19. I don't know of course
 of course, I don't know of course, I don't know of course,

A Slightly, and the number, as will have eleven,

Fort Worth, as will have nine, El Paso has four,

San Antonio County has three, Brown County has three,

as the planning County has two, Tarrant County has one and

the rest -- I would say it's almost even now be-

cause single member districts and multi-member rep-

resentations, as will have eleven, as will have eleven,

Q Now many does Travis County have? I don't believe you mentioned Travis County.

A I didn't mention Travis. Travis County has four.

Q Four?

A Yes, sir.

Q If we didn't miss too many of them—

MR. MURKIN: Lubbock, Jefferson—

A I missed Lubbock.

MR. MURKIN: —and Hidalgo, I believe.

A Yes, Hidalgo, and then Temple has one and a surplus and — Ball.

Q But those are — Temple is still single member because it is one and a surplus?

A Yes, sir.

Q All right.

A And Wichita Falls, instead of having two, will now have one and a surplus.

Q Now, I have asked you these questions to put it in context, Mr. Speaker, as to what I am referring to here.

We have, as one of the groups of persons who are attacking this bill, a number of Republicans from various places in the state, and they allege that in some instances that multi-member districts discriminate against Republicans. Since we have

many single member district members elected to the legislature, are you in a position to tell us under the single member philosophy, how many Republicans are elected from those single member districts, do you know?

A Well, you have a member from Midland, a single member district. You have Representative Christian, from the Panhandle, a single member district. One of the multi-member districts in Houston, you have six out of seven that are Republicans.

Q Six Republicans?

A Out of seven from that area; and of course then you have one from Dallas and you have one from Travis, and I am sure I am overlooking one but I don't intend to. No, that is ten, isn't it?

Q That's ten.

A That's right.

Q Mr. Speaker, based on the figures that you have given us currently, it looks like in the areas where they are elected by single member districts, that the Republicans have only elected two from single member districts, and in multi-member districts, they have elected eight; is that about right?

A Well, it can certainly be argued that way, yes, sir.

Q I mean those are the—

1 A Yes, sir.

2 Q —present facts.

3 A Yes, sir.

4 MR. LIMA: That's all; thank you, sir.

6 REDIRECT EXAMINATION

7 Questions by Mr. Bacon:

8 Q Speaker Nutscher, I have been confining most of my
9 interrogation to the Senate redistricting bill, the
10 reason being is trying to facilitate and expedite this
11 matter, because Mr. Idar from San Antonio, who is
12 not here, has been covering the House.

13 A Yes, sir.

14 Q And I didn't want to be repetitious. Since he is
15 not here, I would like to ask you a few questions
16 concerning this.

17 A I would be glad to try to answer them, sir.

18 Q Now, you have stated your opinion, I think, to the
19 effect that you do not feel single member districts
20 from metropolitan areas is necessarily advisable;
21 is this correct?

22 A I have argued that it is not in the best interest
23 of the metropolitan areas.

24 Q All right, sir. Now—

25 A I would give you a speech on that but I don't think

1 it is appropriate here.

2 Q I am trying to help you get back. Would you---

3 A And it is not based on one party versus another.

4 I want to make that clear.

5 Q All right, sir.

6 A I adopt the idea that I like to see effective legis-
7 lators at work rather than just concept spokesmen,
8 and this is part of my argument for that in redis-
9 tricting.

10 Q I believe you said that San Antonio would have eleven
11 representatives, is this correct?

12 A Yes, sir.

13 Q Do you have an opinion as to the cost of campaigning
14 in eleven single member districts in Bexar County
15 as opposed to eleven at large candidates?

16 A No, I am not familiar with the figures. I am sure
17 that the cost factor would have to be naturally
18 greater, although it has been my experience that
19 when it gets down to the latter part of the campaign,
20 there is a lot of money running by slates, as
21 well as things of this nature.

22 Q Well, do you think that necessarily, slates are to
23 the best interest of the people?

24 A Well, it's kind of like parties, whether you want
25 to emphasize slates is the important thing or party.

1 is the important thing or the individual. No, I
2 think the more the people can know about their rep-
3 resentative, the better things are.

4 Q But don't you think that in an isolated or single
5 member area, that the constituency would really know
6 more about the candidate and the candidate would
7 know more about the constituency than in an at large
8 district, in one where there is some eight hundred
9 and some odd thousand people, such as Bexar County?

10 A Well, when I said large, I said earlier in my tes-
11 timony that I think the number should be kept at a
12 reasonable number, where an average citizen would
13 be motivated to try to know each and every one of
14 them on a personal basis.

15 Q Yes, sir.

16 A And this is the reason I felt like that 23 in Houston
17 to some degree would be unreasonable to run at large,
18 and I stated earlier that I was against the at
19 large position for Harris County. I think that the
20 modified approach was very acceptable.

21 Q All right, sir. Now, do you feel that there would
22 be a closer relationship between eleven single member
23 representatives in San Antonio and one-eleventh of
24 830,000 people, than there would be eleven representa-
25 tives elected at large being responsible for 830,000

1 people?

2 A On the closeness factor, it would probably have to
3 be with the individual district.

4 Q Yes, sir. Do you think the cost of the campaign
5 would be less? Now, of course, I understand in this
6 modern day where you have the television media and
7 so forth, that you can't isolate particular districts,
8 but let's take such things as, well, back in Wash-
9 ington County, for instance, you do a certain amount
10 of running around in your car and shaking hands
11 and so forth, isn't this true?

12 A I like to do it, yes, sir.

13 Q It gets you closer to your people and your constitu-
14 ency?

15 A Yes, sir.

16 Q This of course would be less expensive in single
17 member districts, wouldn't it?

18 A Yes, sir.

19 Q Also mailing, fliers, things of this nature that
20 wouldn't have to go to the entire county, would
21 they?

22 A That's true.

23 Q And would be less expensive?

24 A Yes.

25 Q So there are certain elements, at least, of a campaign

1 which would be reduced cost-wise by having single
2 member districts?

3 A Yes, sir.

4 Q Are you aware that Bexar County, roughly, has about
5 50 per cent Mexicans?

6 A I didn't know the percentage; I knew they had---

7 Q Well, there is a lot of them, isn't there?

8 A Yes, sir.

9 Q Do you feel that if you were to have single member
10 districts in Bexar County or -- all right -- that
11 there would be more or less Mexican representatives?
12 In other words, that the Mexican people would have
13 more or less representatives in the State Legislature
14 than they now have?

15 A I really don't know. I have served with some on
16 each occasion. I believe sometime we would have
17 one or two more than we would at other times. I
18 have never really heard it argued by their group
19 that they would have increased representation.

20 Q Well, let me ask you this. Now, how long have
21 you been in the House?

22 A Ten years.

23 Q All right. Since you have been in the House you have,
24 of course, worked closely with or worked with the
25 San Antonio delegation from time to time on various

hills?

A Yes, sir.

Q Assuming my figures are fairly correct, have they ever during this ten-year period that you have been there had 10 per cent of the representatives from Bexar County Mexican Americans?

A No, I don't think so.

Q All right, sir. One further: Assuming that San Antonio is approximately 10 per cent Negro, have you ever known of a Negro representative from San Antonio?

A No. Let's see. They had one candidate or possibly two last time, but I don't recall serving with any of them.

Q Yes, sir. Would you have an opinion concerning whether or not -- we have already established, at least in some areas, that it would be more expensive to run at large than in single member districts. Would you have an opinion whether or not that the additional cost of campaign would adversely affect the Mexican American or the Negro, as compared with the Anglo?

A I certainly wouldn't think that it should.

Q Well, would you think that the average income of the average Mexican in San Antonio is as high as the average white? When I say "white," I don't know how

1 to distinguish this. I know that they are Caucasian.

2 A Yes, sir.

3 Q But I mean call them Anglo or whatever you want
4 to -- Gringo.

5 A I don't know---

6 Q That's a good---

7 A I don't know the pay scale for Bexar County. I am
8 sure it may not be as high, but then again, I don't
9 --it's another interesting study to see what per
10 cent of campaign expense is borne by the candidate
11 himself, as well.

12 Q Well, that's true too, but wouldn't it also be true
13 -- for the moment we will turn to the Negro, the Negro
14 candidate -- number one is, you wouldn't think that
15 his income would be as high as the average Caucasian
16 candidate, would you, from Bexar County? I am talk-
17 ing about the average across the board.

18 A Yes, I'm sure that is probably correct.

19 Q And by the same token, wouldn't it also be true that
20 his constituency would not be as wealthy, in other
21 words, those that you brought in who was paying for
22 the campaign--

23 A Yes, sir.

24 Q --his constituency pro rata would not be as wealthy
25 across the board as the white candidate's, would it?

1 A That is probably correct.

2 Q Then to some degree, at least, this would be an
3 adverse -- work as an adverse result against the
4 Negro or the Latin American candidate, wouldn't it,
5 in multi-member districts?

6 A Of course, this really depends on how a candidate
7 handles his campaign. I have always tried to dis-
8 courage and stay away from putting candidates into
9 certain type of planned categories. I have always
10 liked to see a public servant try to accept the
11 responsibility to do good work for all the people in
12 his district.

13 Q Yes, sir, and I appreciate your thoughts and agree
14 with your thoughts.

15 A Most of the appropriations I work for in my district
16 go for black projects, and I think it's -- so the
17 reason I mention that is, I am not just here trying
18 to prolong the point. I really feel that way. I
19 think that the ballot should be to the extent that
20 an elected official should be concerned about all
21 the people in his respective area and do as good a
22 job as he possibly can for each and every one of them.

23 Q I appreciate your feelings and I agree. But I still
24 want to ask you this one question. Maybe the Negro
25 doesn't feel this way and maybe the Mexican American

1 doesn't. Wouldn't it actually adversely affect the
2 Negro population and the Mexican American population,
3 based upon the economic factors that we have already
4 discussed, to run at large rather than from a single
5 member district, all other things being equal?

6 Now, I am not talking about contribution from vari-
7 ous personal interest groups. Wouldn't it if each
8 man went up there and paid his filing fee, which
9 I am sure would be the same in any regard, but when
10 we take into consideration mailing fliers, the amount
11 of people he would have to contact and so forth, if
12 all other things would be equal, then the single
13 member district man would spend less on his campaign
14 than one running at large, wouldn't he?

15 A I think that's true.

16 MR. EASON: I believe that's all. Thank
17 you, sir.

18 **RECROSS EXAMINATION**

19 **Questions by Mr. Curry:**

20 Q Mr. Speaker, if a man runs in a single member dis-
21 trict and he has two opponents, and one of them
22 spends a lot of money, isn't he likely to spend more
23 money than otherwise?

24 A In a single member district if one of them spends
25 a great deal of money, it's going to have its effect

1 on the other candidates.

2 Q He is going to have to respond to that?

3 A That is correct. But I want to say on the single
4 member district, when metropolitan areas find that
5 all are equal from effectiveness of representation
6 advantages, it has been a tremendous thing.

7 I have had rural boys from other single
8 member districts criticize my position and say you
9 ought to put the metropolitan boys in single member
10 districts. But the big problems that are facing the
11 state are problems that need to be answered in the
12 metropolitan areas of Texas, and I want to help the
13 metropolitan people solve their problems, and we
14 are looking for not only voting members out on the
15 floor of the House, but we are looking for effective
16 workers to carry these projects and be equally as con-
17 cerned about that as they are making a press release
18 in the press room. That's all I have to say on that.

19 MR. EASON: Just one other question. You,
20 sir, changed the facts on me.

21
22 REDIRECT EXAMINATION

23 Questions by Mr. Cunningham:

24 Q Just one other question, Mr. Speaker. My impression,
25 then, from your testimony is that for Dallas County,

you would favor a -- not a single member district
but a district which are not countywide but -- not
as large as a county but larger than a single member,
somewhere in between?

A I would have accepted that type of plan.

Q Yes, sir.

A And I worked it out with some of the boys who are
known as more of a liberal concept from Dallas
County but yet were probably not the majority view-
point from Dallas County at the last session of the
legislature.

MR. CUNNINGHAM: That's all.

OUR NOTICER

THE STATE OF TEXAS :

COUNTY OF TRAVIS : I

Subscribed and sworn to before me, the
undersigned authority, on this ____ day of January,
1973.

**Notary Public, Travis County,
Texas**

1 THE STATE OF TEXAS I

2 COUNTY OF TRAVIS I

3 I, Opal Looka, a Notary Public duly commissioned
4 and qualified in and for the County of Travis, State of
5 Texas, do hereby certify that pursuant to notice issued
6 and the agreement herein set out, there came before me
7 on the 29th day of December, 1971, at 3:00 o'clock P.M.,
8 at the Supreme Court Building, in the City of Austin,
9 Travis County, Texas, Gus Matscher, who was by me duly
10 sworn to testify to the truth and nothing but the truth
11 of his knowledge touching and concerning the matters in
12 controversy in these causes, that he was thereupon carefully
13 examined upon his oath and his examination reduced to writ-
14 ing by me and under my supervision; and that the deposi-
15 tion is a true record of the testimony given by the
16 witness, as shown by my shorthand notes.

17 I further certify that I am neither attorney or
18 counsel for nor related to or employed by, any of the
19 parties to the action in which this deposition is taken,
20 and further, that I am not a relative or employee of any
21 attorney or counsel employed by the parties hereto, or
22 financially interested in the action.

23 In witness whereof, I hereunto set my hand
24 and affix my notarial seal this ____ day of January, 1972.

25
Opal Looka, Notary Public, Travis
County, Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL

VS. A-71-CA-142

NEW BARNES, ET AL

DIANA REPESTER, ET AL

VS. A-71-CA-143

BOB BULLOCK, ET AL

JOHNNY HARRIOTT, ET AL

VS. A-71-CA-144

PRESTON SMITH, ET AL

VAN HENRY ARCHER, JR.

VS. A-71-CA-145

PRESTON SMITH, ET AL

APPEARANCES:

STUART WELKIN, Esquire,

DAVID HERS, Esquire,

Appearing for Curtis Graves, Et Al;

DAVID R. RICHARDS, Esquire,

Appearing for Diana Repester, Et Al;

ROBERT M. GREENHARRIS, Esquire,

Appearing for Johnny Harriott, Et Al;

HICKET McGUIRE, Esquire,

NATHAN W. EASON, Esquire,

Appearing for Van Henry Archer, Jr.;

B. BRICK CUNNINGHAM, Esquire,

Appearing for Intervenor Conrad, Et Al;

ED IDAR, JR., Esquire,
Appearing for Intervenor in the
Tyler case; ALVIN MITCHELL

WALTER IRWIN, Esquire,
CLEO STEELS, Esquire,
Appearing for Intervenor Washington,
Et Al;

EARL LUNA, Esquire,
Appearing for Defendant Orr;

SAM McDANIEL, Esquire,
AL CUNY, Esquire,
Appearing for Defendants.

DEPOSITION upon oral examination, of

the witness, GREGORY DEWE HOOKER, taken on behalf of the
Plaintiffs, in the above entitled cause, wherein the above
named persons are the Plaintiffs and the above named persons
are the Defendants, pending in the United States District
Court, for the Western District of Texas, Austin Division,
before JACK D. SYKES, a Notary Public in and for Travis
County, Texas, on the 28th day of December, A.D. 1971,
in the offices of the Attorney General, Supreme Court
Building, Austin, Travis County, Texas, between the hours
of 2:00 o'clock P.M. and 3:45 o'clock P.M., pursuant to
the following agreement of counsel:

MR. RICHARDS: I didn't know whether

Sam wanted to treat it just by notice or how you wanted
it.

1 MR. MC DANIEL: I have no objection to ³
 2 treating it as if it were taken by notice, and my
 3 only thing is, I do want -- I am not going to waive
 4 signature on them. Other than that, why, we can
 5 agree that it can be used and that you can reserve
 6 your objections until the time of trial, as far as
 7 I am concerned.

8 MR. RICHARDS: All right. And, so we --
 9 do I understand that we are all in agreement that we
 10 will waive the provisions of the federal rules that
 11 require the witness to be absent in order to use
 12 the deposition, that the deposition may be used --
 13 that we will waive the provisions of the federal rules
 14 that require the witness to be unavailable in order
 15 to use this deposition, and that this deposition may
 16 be used as testimony either before the Court or before
 17 the Master, is that correct, without proving the
 18 witness's unavailability?

19 MR. MC DANIEL: I have no objection to
 20 that, although I don't want that stipulation to
 21 indicate that I am agreeing to present the witness's
 22 testimony strictly by deposition.

23 MR. RICHARDS: I understand. You are
 24 not waiving the right to call him as a witness?

25 MR. MC DANIEL: That is correct. That is

1 correct.

2 MR. LUNA: For the state chairman, we
3 do not waive our right to cross examine the witness
4 at the trial, and in the event he should not be
5 available at trial, we do not then waive the use of
6 this -- if he is available, but is not placed on the
7 witness stand, we don't waive our right to cross
8 examine him at the trial.

9 MR. RICHARDS: Well, let me be sure I
10 understand. Suppose that the witness is not called
11 as a witness at the time of trial, what is your
12 position with respect to the use of this deposition
13 at the time of the trial?

14 MR. LUNA: I reserve the right to
15 examine him in person.

16 MR. RICHARDS: Well, then, at least
17 you are on notice from me that it is going to be my
18 position that if you have questions to ask the witness,
19 you had better ask them today, because I will intend
20 to offer this deposition as evidence at the time of
21 trial, and you are here pursuant to notice, and at
22 least you have the opportunity to examine him, and
23 it will be my position, if you don't afford yourself
24 that opportunity today, that we will offer the deposition
25 as firsthand testimony.

1 MR. LOMA: I understand.

2 MR. RICHARDS: All right. Sure.

3 MR. LOMA: I may ask him some questions
4 today, but I am simply not waiving any of my rights
5 by participating in this deposition that I don't
6 automatically waive thereby.

7 MR. RICHARDS: Is there anybody else
8 who has got a position, attorneys who are present who
9 want to put any position of records in the case?

10
11 GREGORY DREW HOOSER, a witness of lawful

12 age, being first duly sworn on the above cause, testified on
13 his oath as follows:

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. MELKIN:

16 Q Mr. Hooser, would you please state your name?

17 A Gregory Drew Hooser.

18 Q For the record, my name is Stuart Melkin and I am an
19 attorney, along with Mr. Bary, for the Plaintiffs in
20 the Houston case. The questions that I will be asking
21 you, for the most part, will deal primarily with the
22 Senate redistricting.

23 A Uh huh.

24 Q Now, have you ever had a deposition taken before?

25 A Yes, sir, I have.

1 Q All right. And, in preparation for this particular
2 deposition have you conferred with your attorneys?

3 A Yes, sir, I have.

4 Q And, what attorneys would that be?

5 A Mr. Sam McDaniel.

6 Q Would that be today or before today?

7 A Today.

8 Q For the first time?

9 A For the first time.

10 Q Has he given you any particular instructions on how to
11 respond to questions?

12 A No, he hasn't.

13 Q Now, what is your address?

14 A It is 1206 Rock Cliff Road, Austin, 78746.

15 Q How old are you, sir?

16 A I am twenty-five.

17 Q Are you married?

18 A No.

19 Q And, what is your occupation?

20 A I am a law student and --

21 Well, part time during the last session of the Legis-
22 lature I served as clerk to the Senate Committee on
23 Congressional, Judicial and Legislative District.

24 Q All right. And, what year are you in in law school?

25 A Third year.

Q Okay. Do you expect to graduate in June?

A I graduate at the end of August.

Q Do you have any plans as to what you will be doing after graduation?

A Not at this point.

Q You have not accepted employment of any kind?

A No, sir, I have not.

Q All right. As I understand your position, you were a clerk to the Senate Committee on Congressional, Senatorial and Legislative -- representative redistricting?

A Yes, sir.

Q All right. And, who would be your immediate superior?

A Senator J. P. Word of Meridian.

Q And, was Senator Barbara Jordan of Houston vice chairman of that particular committee?

A That is correct.

Q Can you briefly outline the functions of that committee?

A The functions of that committee were to draw up redistricting bills for the House and Senate and for the Congressional District as well as certain judicial districts.

Q Did you participate in the drawing up of the plans of Congress as well as the State Senate and State House?

A In participation, yes. I participated to an extent.

Q Okay. Did any of the bills that you participated in

1 drafting become law?

2 A Well, the bill that was adopted by the Conference
3 Committee between the House and Senate on, I think, the
4 third or fourth day of the first special session did
5 become law.

6 Q All right. And, what particular legislative body did
7 that redistricting?

8 A That was a redistricting bill for the Congressional
9 Districts.

10 Q Okay. And, what about for the State Senate?

11 A No State Senate map was ever adopted into law.

12 Q And the State House?

13 A The House of Representatives passed a bill, the Senate
14 concurred, and it did become law.

15 Q All right. Now, with regard to the State Senate, did
16 your committee report a Senate reapportionment plan?

17 A There was no report, formal report, from the full Senate
18 Redistricting Committee.

19 Q All right. Is this committee divided into subcommittees?

20 A Yes.

21 Q All right. And, could you list the subcommittees?

22 A The membership?

23 Q No.

24 A There was just one subcommittee on the House and one
25 subcommittee on the Senate.

1 Q And, when particularly did you fall into all this?

2 A Let me back up on that last one. Yes, that is correct,
3 and one on the Congressional district.

4 Q Where, in particular, did your functions take you?

5 A My functions were to provide the members of the committee
6 with population data, with maps from which -- which to
7 use in their own efforts, to provide them with, oh,
8 computer -- not computer checks -- calculator checks and
9 that sort of thing -- check mathematical data and just
10 generally run errands.

11 Q Who were the members of that committee in addition to --

12 A There were nineteen members of the full committee.

13 Q I see.

14 A But I don't have a list of them.

15 Q What about the Senate subcommittee; would you know those?

16 A I think there were seven to eight on each subcommittee.

17 Q There were three subcommittees?

18 A I believe there were three.

19 Q All right. Now, in accordance with your function did you
20 also have the responsibility -- or were you called upon
21 to provide racial data of census tracts or Senatorial
22 areas or --

23 A We had --

24 Q -- county areas?

25 A During the regular session of the Legislature --

Let me see. I am not positive whether we had ethnic breakdowns or racial breakdowns. I don't believe that information was available during the regular session. Now, it became available, I believe, shortly thereafter.

Q All right. Did the work of your committee end with the close of the regular session?

A No. The committee was held over to assist the Legislative Redistricting Board when they went about their efforts.

Q And that would be both with respect to the House and the Senate?

A That is correct.

Q Now, did you have any -- were your duties the same in that capacity?

A Uh huh.

Q All right. Did you work in contact with any particular members of the Legislative Redistricting Board?

A With all of them.

Q All right. Would those be personal relations between you and each of them? Were you ever called upon to provide specific information to any --

A Certainly, with all of them.

Q Did any of that information include racial breakdown of counties?

1 A Yes. We had racial breakdowns by -- as I say, after
2 the regular session. I think even after the special
3 session too.

4 Q Do you know whether or not the racial information that
5 you had was taken into account in drawing Senate lines?

6 A No, I don't know.

7 Q So, the fact that you had it was really irrelevant to the
8 board?

9 A I have no way of knowing how relevant or irrelevant it
10 was. I provided the information and that was all.

11 Q Who, specifically, requested you for that -- for racial
12 information?

13 A I made it available to all members.

14 Q Was it done pursuant to a specific request by anyone or
15 more than --

16 A I don't recall. I think I went ahead and just gave them
17 the information as part of the whole deal.

18 Q Where did you get it?

19 A I got it from the census bureau.

20 Q And, you felt so spunky that you felt you would present
21 that to the people?

22 A Sure, to give them everything that could possibly be
23 used.

24 Q All right. Did you also have a request, or did you
25 furnish -- or did you furnish a history of voting patterns

1 in any other counties?

2 A We had some information, some voting pattern information.

3 Q And, could you describe the nature of that information?

4 A Just a general breakdown which was through the Secretary
5 of State's office, which has the election figures for
6 State-wide elections throughout the -- the last --

7 Well, they keep the official public records as certified
8 by the legislature.

9 Q All right. And, do you know whether or not they were
10 also a part of the information that each member of the
11 Legislative Redistricting Board had at his disposal?

12 A I would be guessing if I knew that everybody, you know,
13 used it or had it or not.

14 Q All right. But, to your knowledge it was available to
15 them?

16 A Oh, yes. It is available to anyone.

17 Q That would have been voting patterns in State-wide
18 elections from the time that the State of Texas started
19 keeping records?

20 A Voting results.

21 Q Voting results?

22 A Yes. It is available to the general public in the
23 Secretary of State's office.

24 Q When you say "State-wide elections" are you speaking of
25 State Senators and State Representatives?

1 A A Let's see. I think we had some data on State

2 Senatorial elections. We did not have any on --

3 Q All right. Did you have that data on Harris, State
4 Senatorial --

5 A Yes.

6 Q And, did you in the course of your duties provide that
7 particular information to the members?

8 A No.

9 Q Now, with regard --

10 Are you personally familiar with the congressional plan
11 that was adopted?

12 A Fairly familiar.

13 Q Well, before I get to that --

14 I am still a little confused. I am not sure if your
15 functions were purely clerical or if you actually took
16 part in some decision -- in the decision making process?

17 A Not in the decision making process.

18 Q So, your total function was to supply information to
19 other people?

20 A I was, you know, when someone would say "Well, does this
21 work out" or "Are the numbers correct here" I would check
22 through that. So, I don't know whether you would call
23 that decision making or not; all I did was simply try to
24 check out a suggestion that was made in one area or
25 another.

1 Q The suggestions that were made would be checked
2 by you only for numerical accuracy?

3 A Yes.

4 Q And nothing else?

5 A Not that I recall.

6 Q All right. Now, back to the question of the congressional
7 al plan, you say you have some specific or general
8 understanding of what that --

9 A General knowledge. I don't think I can answer specifics.
10 I haven't looked at the map in a long time.

11 Q And the general knowledge you got would be by having
12 worked on the numbers, right?

13 A Right.

14 Q All right. Now, you are aware that a new congressional
15 district has been drawn in Harris County?

16 A Yes.

17 Q Do you know the general ethnic background of that
18 particular --

19 A Yes. I think it is predominantly black.

20 Q All right. And, can you tell us where that particular
21 plan that was adopted came from?

22 A That particular plan that was adopted was drawn up in the
23 Conference Committee on the last full evening of the
24 special legislative session.

25 Q All right. Do you know who the members of the Conference

Committee were?

A Let's see. Senator Ward, I believe, was president. Senator Jordan, Senator Wilson, Senator Patman, and I hope I am not offending the fifth member because I cannot remember who that was. Of the House of Representatives, both Speaker Mutscher and Lieutenant Governor Barnes were present, Delvin Jones, I believe, Hinton Murray served on that committee, Clyde Haynes, and that is all I can remember.

Q Do you know if it was a unanimous vote of the Conference Committee?

A I don't recall.

Q All right. Did the district, or the plan that included all of Harris County, differ substantially from the Senate bill that you had initially reported out?

A That I don't really recall. I do remember that -- I don't remember specifically. I think that there were five districts in each plan, but that is about all. I don't remember the boundaries of the districts. By the way, that information on the members who were present at the Conference Committee and whatever the vote was is available. The press was present during the whole committee meeting that night.

Q Now, in the course of your deliberation or your work in the Senate, on the Senate plan, did you have situations

where you were given plans that had been presented

by members of the general public?

A Yes. We have those on file.

Q Do you know whether or not any one or more of those were combined to come up with --

A No.

Q -- any plan that you worked on?

A I don't know whether they were combined or not.

Q All right. And, do you know whether or not there was any such reliance upon any of those plans by the Legislative Redistricting Board?

A No, I do not.

Q All right. Have you seen the Senate plan that has become law?

A Yes.

Q Are you generally familiar with it?

A Only roughly familiar.

Q All right. Let's get a copy of it. We will come back to that. In the course of working with the Legislative Redistricting Board, were you sent several maps to check for numerical accuracy?

A Oh, yes. I looked at a number of plans.

Q All right. And, were more than one of those plans found not to be numerically accurate, yet were subsequently rejected?

1 A I really can't remember.

2 Q Do you know whether or not a plan that you gave somebody,
3 or somebody gave you, checked out numerically and
4 subsequently did not become law?

5 A I don't remember any specific plan at all.

6 Q All right. Do you remember whether or not there was
7 more than one plan that checked out numerically?

8 A No, I don't recall.

9 Q Do you remember if any of them checked out numerically?

10 A (Witness shakes head).

11 Q Do you remember if the one that became law checked out
12 numerically?

13 A It certainly did. We had to check it for population
14 and deviation.

15 Q Okay. Now, as I understand it, you had been a member
16 -- or have you been a member of Lieutenant Governor
17 Barnes staff?

18 A I do not serve on his staff, no.

19 Q Have you ever been?

20 A No. I never have served on his staff.

21 Q Have you ever worked with his staff?

22 A Certainly.

23 Q And, in what capacity did you work with his staff?

24 A I have worked through the committee, which is, I guess,
25 about three steps removed from being a direct member of

1 staff.

2 Q When you say "the committee" is that how it is known?

3 A The Redistricting Committee, and then through my capacity
4 as clerk of the Redistricting Committee with the
5 Legislative Redistricting Board.

6 Q Did you ever have an occasion to draw maps which would
7 indicate, by hashing, cross-hashing, or shading or some
8 such device, voter preferences ranging from liberal to
9 conservative throughout the State?

10 A Yes.

11 Q Now, in response to what directive did you make those
12 drawings?

13 A My own.

14 Q And, what did you do with them after you drew them?

15 A I still have them on file.

16 Q What prompted you to make them?

17 A I just wanted --

18 My job was to provide the members with anything they
19 thought they could possibly use.

20 Q All right. Did anybody think they could use that type
21 of information?

22 A Yes. I had requests from a number of members who were
23 curious about how a particular county voted.

24 Q Okay. And, when we say "member" we are talking about
25 in the committee or Redistricting Board, or both?

A Members specifically of the Senate, because this information was -- I started putting together things, maps, any sort of data that I could possibly find and we made available to them, as far as guidelines, printouts from -- I can't remember the source. But, regarding constitutional guidelines. What I did was put together anything I thought would be of any possible use whatsoever.

Q All right. Now, did you have specific requests for that particular information from members of the Legislative Redistricting Board?

A No, not that I recall.

Q Was that information supplied to them as well?

A Yes, it was available.

Q All right. Was it given directly by you to any of their staff?

A Well, yes. They asked --

when I was asked to give that information it was given.

Q All right. And, who asked you?

A I don't recall any specific request.

Q Well, did Mr. Pottor ask you that?

A Not that I can recall.

Q Did Mr. Johnson ask you that?

A I can't recall whether he did or not.

Q Did anybody in the Attorney General's office ask you for

1 this -- Mr. McDaniel?

2 A I don't recall any specific request at all.

3 Q Mr. Jones?

4 A No, I just don't recall any.

5 Q Lieutenant Governor Barnes?

6 A (Witness shakes head).

7 Q So, as I understand it, you simply decided that that
8 might be helpful to somebody and you drew it up?

9 A Uh huh.

10 Q And, but there were no -- not even general request for
11 that type of thing, voting patterns?

12 A Let's go back.

13 Q All right.

14 A I gathered the information, when a request by a member
15 of the Senate came in and wanted to know "Do you have
16 anything on voting patterns, how Dallas County voted"
17 I provided it.

18 Q Well, but let's move beyond the Senate Committee and get
19 into this Redistricting Board.

20 A All right.

21 Q Now, what about information request by members of the
22 board, members of the Attorney General's staff, members
23 of the Lieutenant Governor's staff, regarding voting
24 patterns?

25 A I do not remember any specific request for me to bring

that information to any particular person to give to them to help draw lines.

Q Did you in fact bring that information?

A Yes, I had that information and carried it around with me.

Q And, who did it go to?

A Whoever anyone was drawing a map, I had it there.

Q All right. And, who were some of the people that were drawing maps that saw that information?

A Lieutenant Governor Barnes staff.

Q Does that include Mr. Spellings?

A Yes.

Q All right. To your knowledge did Mr. Spelling receive information on voting preferences or voting patterns in the course of drawing up maps?

A Yes.

Q Okay. And, that would be both Senate and House maps?

A Yes.

Q All right. And, the type of information that he received would have been by precincts or census tracts or what -- voting patterns?

A Which areas?

Q Harris County.

A In Harris County, yes, it was done by census tracts.

Q So, he had information as to voting patterns, from a band

of liberal to conservative, by census tracts?

A Uh huh.

Q And, based upon what sources did you draw your voting records -- your voting histories in Harris County?

A In Harris County?

Q Yes.

A gubernatorial elections, Senatorial elections, and I think the Attorney General's election.

Q Any city elections?

A No.

Q No mayor elections?

MR. MC DANIEL: When you say

"Senatorial" you mean national Senatorial or State?

A State Senatorial --

No, I am sorry. National Senatorial, State-wide election.

MR. MC DANIEL: Okay.

Questions continued by Mr. Malkin:

Q What about State Senatorial?

A No.

Q All right. Did you look into any city-wide elections other than mayor -- such as school boards?

A No.

Q All right. And, this would have been back over a period of what time?

A Since 1966, I believe, or '64, one of the two.

Q Now, can you think of any reason why that type of information would be helpful to a person drawing a map?

A I have no idea what goes on in the minds of the guys who are drawing the maps.

Q Well, as I understand it, no one asked you for this information but you thought it might be helpful so you did it?

A Yes, I just estimated that someone might want to look at it.

Q But, why would they want to look at something like that?

A I suppose to check out a new district that they got, or their old districts or whatever.

Q These are people who are drawing the lines, now?

A Yes.

Q Like Mr. Spellings?

A Like any member of the Senate.

Q We are back again on the Redistricting Board?

A Well, let me say this, that we had submissions and preferences from every member of the Senate and general public and everybody.

Q But, why would you think that someone like Mr. Spellings would be interested in voting patterns?

A That information was made available to everybody.

Q I appreciate that.

A And, I had the information available to Mr. Spellings

just as I had it to anyone else.

Q But, why would you think he would be interested in --

MR. MC DANIEL: That calls for him to speculate, in the first place. And, in the second place, there has been no showing he was interested in it, and I will instruct him not to answer the question.

MR. LUNA: Besides that, the witness has already said he didn't know.

MR. MC DANIEL: That is right.

Questions continued by Mr. Melkin:

Q Your answer --

Rather, your previous answer, though, has been that Mr. Spellings did have this information available to him when he drew Senate and House districts, is that right?

A Yes, sir.

Q And, just to clarify the record, that was based upon a request by him for that information?

A No.

Q You simply dropped it off to his office?

A Whenever information came in I simply carried that with me, just everybody else -- from population figures and all that sort of thing.

Q Where were you carrying this?

A In a heavy briefcase.

Q You were walking around walking into offices and saying

1 "Is there anything in my bag you are interested
2 in?"

3 A When I am called I take everything.

4 Q All right. So, you were called by Mr. Spellings?

5 A Yes.

6 Q And, he said "Bring your large briefcases with you"?

7 A Yes, bring your information.

8 Q All right. So, you would be keeper of all information
9 of this particular committee, is that right?

10 A Yes, at least to my knowledge.

11 Q Did you leave --
12 When you went to Mr. Spellings --

13 How many times did you go to him in the course of the
14 Legislative Redistricting Board deliberations?

15 A I have no idea how many times.

16 Q Would it be more than ten?

17 A Probably, yes.

18 Q How do you know specifically that he looked at voter
19 preferences?

20 A I don't know. I don't recall whether he did or not.

21 Q Did you leave your briefcases with him?

22 A At times, yes.

23 Q And, you would come back and pick them up?

24 A I was in and out of the office all the time.

25 Q Now, you did, as I understand it, take part in checking

- 1 for mathematical accuracy?
- 2 A Yes, I did.
- 3 Q All right. And, how did you tie in with Mr. Fisher; do
- 4 you know Mark Fisher?
- 5 A I don't recall. Was he an employee of some member of the
- 6 board? I don't really recall Mark Fisher.
- 7 Q Okay. You, however, would check for mathematical
- 8 accuracy of various, say, Senate plans?
- 9 A Uh huh.
- 10 Q Okay. Were you checking for mathematical accuracy of
- 11 Senate plans during the course of the Legislative
- 12 Redistricting Boards responsibility?
- 13 A Yes, I was.
- 14 Q And, can you tell us approximately how many of those
- 15 plans, Senate, that you checked?
- 16 A I have no idea.
- 17 Q Would it be more than one hundred?
- 18 A Probably not.
- 19 Q More than fifty?
- 20 A Probably not.
- 21 Q More than twenty?
- 22 A There I don't know.
- 23 Q From twenty to fifty?
- 24 A Anywhere in that line.
- 25 Q Okay.

1 A More or less. I have no idea.

2 Q Do you know if any of those checked mathematically?

3 A I do not recall.

4 Q You don't remember if you had to tell someone that it
5 was right or wrong?

6 A Not specifically, I don't recall.

7 Q Who would request that you check a plan for accuracy?

8 A Oh, a Senator.

9 Q We are on the redistricting board now, we are past --

10 A Okay. Back to that. That is true too. As I said,
11 members of the Senate submitted their preference plans
12 and asked me and I had to check them.

13 Q They were submitting them to you directly as opposed to
14 submitting them to the board?

15 A They knew that whenever a map would be drawn that I
16 would make it available to, you know, to be submitted.
17 As the clerk I was the intake man and then I provided
18 it, you know, to anyone else that wanted to look at it
19 and brought it to the attention of the other members of
20 the board. And, so if a Senator thought he had a good
21 plan he came -- he might come to me and he might have
22 checked it out himself -- some did and some didn't. And,
23 I would, you know, check out a map and see if it was
24 okay with him -- or see if it checked out -- if it was
25 even feasible. And, then I would go ahead and tell him,

you know, whether it checked out mathematically

or not.

Q You don't recall whether you told anybody their's did or didn't?

A You just triggered my memory. I remember one in particular was, I think, Senator Patman submitted several plans, and that is the only one I can recall because I do recall he was in several times. He had his own computers set up.

Q All right. Now, if a plan were given to you would you have it reproduced and delivered to each member of the board or how did that process work?

A Most of the time, if I recall, for example, in Senator Patman's case, he brought his plan to me and I checked it out and returned it to him and then he brought it to the members of the board — to their attention.

Q I see. And, was that the normal course of proceedings?

A I would say so.

Q Were you given plans by board members for checking?

A Yes.

Q All right. And, do you remember whether or not any of these did not check — did not balance out numerically?

A I just don't recall.

Q Were these plans that board members had that were delivered to you, were they delivered physically? Did

they call you up to pick them up or did someone drop them off or were they mailed, or how did that work?

A Some were dropped off, some were given to me, you know, in person. Some of the plans were not complete plans. A member might say, you know, does this -- does this check out numerically, and I would just add it up on the spot.

Q Did memoranda accompany any of the plans that were sent by members of the board to you?

A Not that I remember.

Q There were none at all?

A Not that I recall.

Q Now, if such memoranda did exist would they be attached to the maps? Would there be a separate file of memos?

A I don't have any recollection.

Q Well, do you know of any?

A I certainly can't remember any memos that weren't with them.

Q Do you know of any file or one or more memoranda that were circulated among members of the board discussing various plans?

A I have no knowledge of anything like that.

Q Did you participate or did you attend any of the meetings of the Legislative Redistricting Board?

A Yes.

Q All right. Did you attend any of the public meetings?

A Yes.

Q Did you attend any of the private meetings?

A Yes.

Q And, how many public meetings did you attend?

A I can recall two. And --

Q All right.

A And then the final adoption.

Q All right.

A But, that is all.

Q How many private meetings did you attend? I said, too.

A I have no recollection of a given number. I attended several.

Q Would it be between five and ten?

A Probably.

Q All right. And, were all the members of the board there?

A Sometimes, yes. Sometimes, no.

Q Okay. So, there were about five or ten private meetings with --

A That I attended.

Q That you attended. But, there could have been more that you wasn't at?

A Yes.

Q Do you know if there were more than that?

A No, I don't know specifically.

Q Now did you hear there was a meeting? Was there a letter or something that was sent to you, "We are going to have a meeting today"?

A I just received a phone call, usually.

Q Okay. And, where would you meet?

A In anyone's offices.

Q Okay. And, that would be --

Do you specifically remember occasions when all of the members of the board were present at the private meetings that you were at?

A No, I don't recall one of which all members were present.

Q Okay. Would members of the staff also be present at that time?

A In some.

Q The respective staffs?

A In some cases, yes.

Q Do you remember the discussions that occurred at these private meetings?

A Well, could you be more specific?

Q Well, do you remember questions of talking about voter preferences?

A No, I don't remember.

Q All right. Let me approach it a different way. Based

upon all of your attendances at the various meetings that you attended, what factors went into the Legislative Redistricting Board's decision to draw the lines in the Senate as they draw them -- what factors did they consider that you know of?

A -- I don't have any idea.

Q What factor --

A What?

Q What factors were discussed?

A The only factors I can remember are, you know, saying "We have got to get within a population deviation; that has got to be acceptable". And, that they knew that and were trying to, you know, just draw a good map that would be acceptable.

Q When you say "a good map" what do you mean?

A A map that would be acceptable to the public, that would not be obviously gerrymandered, that would look good, that would try to provide a good basis --

Q When you say "gerrymandered" what do you mean by that term?

A Well, I would say one that goes out of its way to accomplish certain goals.

Q Such as?

A That would be up to, you know, whoever considers a certain goal to be attained by a map.

Q I understand that. But, of course, you have now stated that the consideration, one of the considerations of the members of the board, was that a plan shouldn't be obviously gerrymandered?

A That is right.

Q Now, what I want to know is: since they were discussing the question of gerrymandering, in what context were they discussing it? Were they talking about incumbency or were they talking about race, were they talking about voter preferences -- how were they using the term?

A They were using the term in the manner of drawing a constitutional map.

Q All right. They did not want the map to look -- to be gerrymandered?

A That is right. They wanted a constitutional map.

Q Well, let's back up just a little bit. With regard to their desire for a constitutional map, did you hear that desire expressed?

A Yes.

Q "We want a constitutional map". Did you hear a discussion as to the factors that they would have to consider in order to fall within constitutionality?

You have mentioned population; are there any others?

A Not that I can recall. The ones I can remember are trying to get within an acceptable deviation to the

1 courts.

2 Q And, your understanding of gerrymandering would be a
3 term used to describe some mathematical function?

4 A Well, I suppose.

5 Q All right. Now, when you say "good map" is there any
6 implication in that statement of compactness of districts?

7 A That would be speculation.

8 Q Well, then, you don't really know what they meant when
9 they said they wanted a "good map"?

10 A The only assumption I could have is they meant a
11 constitutional map.

12 Q Now are you using that term "constitutional"? Would
13 that be one that would stand up in court?

14 A Yes, one that would stand up in court.

15 Q But, you don't know what they thought would even be
16 necessary to deal with other than numbers?

17 A (Witness shakes head.)

18 Q Was more than one map, that the committee considered
19 constitutional, discussed by the committee?

20 A I have no recollection.

21 Q Do you know specifically if they decided the Harris
22 County map was one they felt to be constitutional?

23 A I would assume so.

24 Q All right. You heard no discussion on the question of
25 Harris County senatorial districts?

1 A Well, other than the fact that they said that they
2 would go along with it, that they thought it was a good
3 map and they, you know, they were going to sign their
4 names to it.

5 Q Now, who drew this particular map? And, when I say
6 "this particular map" I mean the map that was signed by
7 three members of the committee?

8 A I don't recall who drew this.

9 Q Did you ever know? Are you saying you have forgotten?

10 A No, I am saying that I simply do not know who, you know,
11 drew this map. Some parts of it look familiar and
12 other parts of it do not. I just do not know who is
13 the author of this particular map; if it is a combination
14 of maps or what.

15 Q Okay. You don't recall, or do you, about having the
16 occasion to check this particular map out numerically?

17 A Yes, I checked this map out.

18 Q All right. And, do you know when you did that?

19 MR. MR. DANIEL: Are we speaking
20 specifically of the Harris County senatorial district?

21 Questions continued by Mr. Walker:

22 Q Senatorial district?

23 A I checked it out, well, I suppose whenever, you know, it
24 was submitted to me to check out. And, then if it did
25 check out then it was submitted as the map.

- 1 Q But, you have absolutely no concept of when that was? ³⁴
- 2 A No. I would imagine very shortly before it became
- 3 finally adopted.
- 4 Q Do you know who gave it to you to check out?
- 5 A No, I don't recall.
- 6 Q Now, did you also have an occasion to check this
- 7 particular map against your precinct voting preferences?
- 8 A Yes. I do remember showing it to two members of the
- 9 press.
- 10 Q All right. Now about the members of the board?
- 11 A I don't specifically remember showing it to -- outlining
- 12 it or anything -- to members of the board.
- 13 Q Now about to any of their staffs?
- 14 A I don't recall showing it to any members of the staff
- 15 either.
- 16 Q So, no one was concerned with the way voters in Houston
- 17 voted?
- 18 A I don't know whether they were concerned with it or not.
- 19 Q But no one was concerned enough for you to show it to
- 20 them?
- 21 A I do not recall if anyone specifically asked that it be
- 22 shown, that I outline it or do anything with it.
- 23 Q Do you remember ever showing it?
- 24 A The only specific recollection I have of showing it to
- 25 somebody was two members of the press.

Q All right. Who were they?

A Two members of the Houston newspapers, Capitol Correspondence. I do not recall the names.

Q Was it Beau Byars?

A It was not Beau Byars.

Q Was it Wiley Post?

A I don't believe it was Wiley Post either.

Q As a basic summary, you had no policy making power whatsoever?

A Not that I was ever aware of.

Q You really were pretty much of an information gatherer and deliverer?

A Roughly.

Q And, you did some mathematical checking?

A Yes.

Q You were privy to conversations but you remember some of them specifically of the board?

A None that I can recall.

Q You don't remember when you first saw this map?

A No.

Q You do remember checking it only for mathematical accuracy?

A Right.

Q MR. NELKIN: That is all for now.

Q MR. IDAR: Could I ask him a

couple of questions?

CROSS EXAMINATION

QUESTIONS BY MR. IDAR:

Q Mr. Mosser, my name is Ed Idar and I am representing the Mexican-American intervenors in what we call the gopster cause that was filed in Tular.

A Yes, sir.

Q And, we are concerned primarily with the House.

A Yes, sir.

Q We are not contesting Senatorial redistricting.

A Oh huh.

Q Now, let me see. You told, on questioning by Mr. Melkin, you testified that you provided members of the Senatorial committee, and presumably later on, members of the Legislative Redistricting Board, with population data by census tracts?

A Yes, sir.

Q Presumably for the entire State?

A Yes, sir.

Q Did you provide them with any data relating to the Mexican-American population?

A No, sir. No information of that sort is available from the census bureau.

Q Well, do you mean there is none available for the 1970

census?

1 A Right.

2 Q Are you aware it was available for the 1960 census?

3 A It would be assumption on my part. I am sure it was
4 available for the 1960 census.

5 Q Well, didn't you think it crucial to give them at
6 least some rough idea, even if it was ten years old or
7 nine years old, as to where the Mexican-Americans were
8 concentrated throughout the State?

9 A No, I didn't. That information on Mexican-American
10 citizens -- there was no information of that nature at
11 all.

12 Q In the 1970 census?

13 A For the 1970, and none was made available through me
14 at all.

15 Q And, you didn't think that the 1960 census data would
16 be of any useful function?

17 A I never considered it.

18 Q You just didn't think about it?

19 A (Witness shakes head).

20 Q Do you think it would have served a useful function?

21 A I wouldn't know.

22 Q Now, you said that the committee, the Senate committee,
23 was held over to assist the Legislative Redistricting
24 Board?

25 A My capacity was extended.

- 1 Q You mean your job as such?
- 2 A Yes, sir.
- 3 Q As clerk of the committee?
- 4 A Yes.
- 5 Q Were you assigned to work with the board?
- 6 A Not formally. To my knowledge I don't know whether there
- 7 was any formal recommendation or anything made.
- 8 Q Who told you that you could go ahead and work with the
- 9 board in drawing up House and Senate district plans?
- 10 A Mr. Spellings told me that I was to continue.
- 11 Q What was his relationship to the Senate committee?
- 12 A To the Senate committee? He is the Lieutenant Governor's
- 13 Executive Assistant.
- 14 Q And, was the Lieutenant Governor the chairman or something
- 15 of this committee of the Senate?
- 16 A He appoints all committees in the Senate.
- 17 Q Does he also have jurisdiction over the staffs?
- 18 A His jurisdictional lines I am not real familiar with.
- 19 I would assume so.
- 20 Q At any rate, it was Mr. Spellings of Mr. Barnes staff
- 21 that told you that you as clerk of the Senate committee
- 22 would continue after the session was over and would be
- 23 working with the Legislative Redistricting Board?
- 24 A Yes, sir.
- 25 Q Now, you further indicated, on questioning by Mr. Melkin,

1 that you prepared a number of maps and other data
2 regarding voting patterns?

3 A Yes, sir.

4 Q Specifically, I think he was asking you about Harris
5 County. Did you do likewise, say, for Bexar County?

6 A Yes, sir.

7 Q And, did you also furnish this information to the members
8 of the Legislative Redistricting Board?

9 A In the same manner that I previously stated.

10 Q Now, what was the voting pattern information that you
11 had available and furnished to the members of the board
12 as related to Bexar County?

13 A The same information.

14 Q Did it involve how they voted in the Governor's race?

15 A Yes, sir.

16 Q The National Senatorial election?

17 A Well, those state-wide elections I mentioned.

18 Q Nothing on State or House of Representatives?

19 A No, sir.

20 Q Did you --

21 Either in connection with Bexar or Dallas or Harris or
22 any other county, did you come up with any information
23 as to voting patterns by ethnic or racial groups?

24 A No, sir.

25 Q You didn't think it was material to look into that

expect of that?

A There is no way I could do it with the information that I had.

Q Okay. We have had testimony here that at one point Mr. Spelling brought a map to staff members in the legislative council for making copies, which were circulated to the members of the board, and that this map ultimately became the -- I am talking about the House -- the map that the board ultimately adopted?

A Yes.

Q Do you have any knowledge of that particular map?

A Yes, I have some knowledge.

Q Are you familiar with the House, the House plan, that the board did adopt?

A Yes, fairly familiar.

Q Do you know who drafted or who drew up that plan or map?

A I would have to say that the board, members of the board, drew it up. Mr. Spelling drew a map, the Attorney General's office drew maps, the Land Commissioner drew maps.

Q I realize a lot of people were drawing maps, but I am talking about the map that was ultimately --

A The specific one.

Q Who drew that particular map?

A I would think that --

I wouldn't be able to say whose map it was. I think it might have been a contribution of a number of people, but I really don't know specifically who selected a given district and a given map.

Q How much do you know about this particular map that you -- Did you participate in drafting the map?

A Yes, I did.

Q Who with?

A With Mr. Spellings.

Q Did you and him basically draw up the map?

A I don't think I could say that, no.

Q To what extent did you work with him in the drawing up of that particular map?

A Whenever he drew up a map to show to the various members of the board I assisted him in drawing those lines and in checking out to see if a given county compared with another given county and would give us a particular population difference.

Q Whether it fell within acceptable population deviation times?

A Yes, sir.

Q During the various meetings of the board that you attended, I believe you testified you attended a couple of the public meetings and anywhere from five to ten of the private meetings?

1 A Yes.

2 Q You realize, of course, that one of the major issues, as
3 far as House redistricting was concerned, was whether or
4 not the bigger counties, the bigger cities, for example,
5 were going to get single or multi-member districts?

6 A Yes.

7 Q I believe that as late as we or around October 10th,
8 which was just thirteen days before the deadline the
9 board had for drawing up a House plan, that that issue
10 was still up in the air?

11 A Yes.

12 Q Do you recall that?

13 A Yes, sir.

14 Q Sometime between October 10th and October 23rd, that
15 issue was resolved and it was determined that only
16 Harris County, of the major counties, would get single
17 member districts?

18 A Yes.

19 Q Do you recall that?

20 A Yes.

21 Q Can you tell us at what stage this issue was resolved
22 and by whom?

23 A I have no recollection of that.
24 I have no idea.

25 Q Did you attend either public or private meetings of the

board between October 16th and October 23rd?

A Yes, I did.

Q Several?

A Yes, sir.

Q And don't you recall any discussions there on this policy making issue as to whether to go single member or multi-member in the bigger cities?

A Yes. All the members were trying to decide which was the course to go. And, you know, I know nothing more than that.

Q All right. You recall that Mr. Barnes was -- or indicated at least publicly, at least according to what the press reported, that he was in favor of single member redistricting?

A I read that in the papers, yes, sir.

Q But, apparently he ultimately changed his mind and favored it only for Harris County but not for the others?

A He signed the bills.

Q Do you recall whether the board at any time made a decision to instruct the staff to go for single member districts in Harris but to leave the others as multi-member districts?

A I don't remember a specific time, no, sir.

Q Now is it that you don't -- you remember some discussions but you -- and apparently you made some meetings of the

heard at the time that obviously this must have

been in their minds?

A Uh huh, maybe, considering the conversation, I think so.

Q And, you just don't recall how they resolved that issue?

A Because it could have been decided a number of ways.

It could have been decided in personal conversations, which I could not be privy to.

Q When was the first time that you found out that they had

finally decided on single member districts for Harris County and multi-member districts for the others?

A I don't recall any specific date.

Q Can you recall approximately how many days prior to the adoption of the final plan when you learned this?

A No, sir. Not any --

I couldn't give you a number.

Q All right. Now, you indicated that as best you could determine it was the desire of the board to come up with a constitutional plan?

A Yes.

Q And you were a third year law student?

A Yes.

Q Have you taken constitutional law yet?

A Yes.

Q Have you heard of the Chavez case that was decided by the Supreme Court last June?

1 A Yes.

2 Q Are you familiar with the case law as it relates to
3 redistricting and as it further relates to the possi-
4 bility of diluting or minimizing or cancelling the
5 voting strength of significant minority groups or
6 political elements?

7 A Yes, sir.

8 Q Are you familiar with all this?

9 A Yes, sir. I am familiar with roughly what the guidelines
10 of the Chavez case are.

11 Q And, during all the work that you did for this board,
12 providing them with the information that you did, did
13 you at any time provide them with any specific information

14 as to where the minorities were located in the major
15 counties?

16 A No, sir. I had no --

17 As I said, I had no data whatsoever --

18 Q Did the Board ever ask you to gather that sort of data?

19 A No, sir.

20 Q Did the board ever indicate, either the board or members,
21 individual members of the board, ever indicate a desire
22 to check that out to be sure that they were going to
23 comply with the constitutional aspects of this issue as
24 related to the minority groups?

25 A When we have information available we --

Q You at least had it for the blacks, didn't you?

A I had it for the blacks, yes, sir.

Q But, you made no specific inquiry as to how this plan was going to effect the blacks, did you?

A No, sir.

Q You gathered no data relating to how the proposed plans for the Negroes were going to effect the blacks?

A No, sir, not that I can recall.

Q And, you were not asked to provide data by the board or any member of the board, were you?

A No, sir, not that I can recall.

Q Would it be fair to state, based on your observations and what you heard discussed by the board at the different meetings that you attended, that it was the ultimate desire of the board to go ahead and give Harris County single member districts but leave the status quo as it was in the others?

A We were informed that the board had decided to draw up a plan, which was evidently the ultimate result, with Harris County as single member districts and --

Q You say "we". Now, who are you talking about, you and who else?

A The members of the staff.

Q And, who informed you about that?

A Mr. Spellings informed us that that was the -- that was

how the map was going to be drawn, as I said before.

Q Do you know if any other staff members were so informed by other people?

A No, sir, I have no idea.

Q Mr. Spellings is the one that informed you?

A Yes, sir.

Q Were you asked by the board at any time, or by a member of the board, to provide them with any information comparing the cost of campaigning in a district, we will say, roughly seventy-five thousand population in comparison with a district, say, with a million three hundred thousand population?

A No, sir.

Q That information would have been available at least for the last election, would it not?

A I don't know.

Q Doesn't the Secretary of State have expense reports as they relate to the State-wide races?

A I believe I understand that a man has to file his financial statement of expense in an election.

Q And that information would also have been available with the local county clerks as respects some -- well, all of the counties, for that matter, were they not, for county wide races?

A That I have no idea. I think you are giving me more

credit than I am due.

Q So, actually you were not requested by the board, or a member thereof, at any time while all this was going on to provide any data that would contrast your single number districts versus your multi-number districts for your major counties in Texas, except for Harris County, and that the contrast would be as it related to minority groups like the blacks or Mexican-Americans under the single district plan as compared to the multi-number district plan?

A No, sir. I was not asked to provide any of that information. I had, you know, informed the board that there was no data available on Latin-Americans at all.

Q Except --

Of course, you didn't advise them about the 1960 census at all?

A As I said, I never even thought about the 1960 data.

Q All right.

A And therefore there was nothing that I could inform them of the effect of multi-number versus single number districts.

Q What about the black population? You did --

A The blacks -- I did have data on the blacks.

Q Yes.

A Which we was you know, in the middle of the summer or late

is the summer.

Q You got it in plenty of time for it to be considered by the board, did you not?

A Yes, sir.

Q But, you didn't -- they didn't ask you and you didn't provide them with the information as to what the effects on the black population would have been under single member in contrast to multi-member districts?

A In general, there was, you know, some information regarding the blacks. We had a total population figure for the blacks in Harris County and we had a breakdown of mainly where the blacks worked.

Q You did have census tract data that would show you how many blacks and how many whites were in the census tracts, didn't you?

A Yes.

Q And, you could have easily plotted the concentration of the black population, not just in Houston but in Dallas and San Antonio and every other major county, couldn't you?

A In Dallas and in Harris. I could have done the others, but there was no concentration in those areas.

Q You mean there was no effort to determine that?

A No.

MR. IDAR: I guess that

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is all.

CROSS EXAMINATION

QUESTIONS BY MR. KASON:

Q Mr. Kason, my name is Nathan Kason and I am a lawyer from San Antonio and I represent Van Henry Archer, et al

A Yes.

Q -- in a case attacking both the Senatorial and Legislative redistricting.

A Yes, sir.

Q Mr. Archer is chairman of the Bexar County Republican Party.

A Yes, sir.

Q Now, I will try to be brief and I will try not to be repetitious, but there has been a certain line of questioning going on while I was doing other things.

Now, the committee that you named awhile ago, the Conference Committee, are you speaking of the Senatorial Conference Committee?

A I listed both House and Senate members for the Conference Committee.

Q It was a joint committee?

A Yes, sir. The Conference Committee, whenever the House and Senate plans -- This applied to congressional districting only.

Q And, I believe Senator Word was chairman of this committee?

A Yes, sir. He was chairman of the Senate Committee and Representative Delwin Jones was the chairman of the House Committee.

Q What was Senator Word's opinion of the redistricting bills?

A I have no idea.

Q You don't know?

A I haven't talked to him about it, no, sir.

Q Where are you from originally?

A Austin.

Q And, you are attending the University of Texas Law School?

A Yes, sir.

Q And graduating in August?

A Yes, sir.

Q Now, I believe you indicated that you carried around a heavy briefcase with certain memoranda and certain parcels which contained, among other things, policy guidelines or at least -- I forget the way that it was phrased -- but in any event election returns or election strength in particular districts or precincts, is that correct?

A Yes, sir.

Q Did it also contain ethnic, racial and political information by district or precinct?

A Well, as I mentioned before, it was just a breakdown of how a given census tract -- generality of how a given census tract voted. There was no particular, you know, look at, say, Latin-American census tract votes a certain way or anything; they were just broad basics.

Q All right, sir. And, again, I will try not to be repetitious. But, this was drawn largely not by instruction to you but on your own to furnish information for the various members of, not only this joint House and Senate committee but for the board?

A Well, no, sir. Let me make this one point; this was done for the Senate, for the entire membership of the Senate, so that they would have reference to it during the time where we thought we were going to end up redistricting the State.

Q But the same material --

A Yes, sir.

Q -- plus possibly some added to material was available to the members of the redistricting board or the House and Senate?

A Yes, sir. The only added information was that which we received late on the ethnic breakdown.

Q Would this also accrue to the benefit of the legislative

council, Mr. Johnson's office?

A Yes, sir. I assume it would be available to him.

Q Oh huh. And, as you say, you were simply there on call --

A Yes, sir.

Q -- to the various people that wanted this information?

A Yes, sir.

Q Do you still have this information?

A Yes, sir, I believe I do.

Q It is in your jurisdiction and control?

A It wouldn't be under my jurisdiction and control. It is in my office -- Senator Word's office.

Q Senator Word's office?

A Yes, sir.

Q And that is, I take it, open to the inspection of the various people here, is that correct?

A You would have to ask Senator Word.

(Whereupon, a discussion was

held off the record at this

time.)

Questions continued by Mr. Ragon:

Q Then, as I understand it, it is all right with you, Mr. Hoozer and all right with the Attorney General's office, presuming it is all right with Mr. Word, for us to look and examine the contents or make copies of things from

Q As I understand it, Senator Ward would be the person you would ask.

A All right. Would either you or the Attorney General contact Mr. Ward to determine whether or not we can get this permission?

A Yes --

MR. MC DANIEL: Well, Senator Ward is available to you as he is to me, and I can give you his phone in Meridian and you can certainly contact him and find out whether it is. And, you have got full leavey --

I have no objection to you contacting him at all.

MR. EASON: And, you will furnish us with his telephone number?

MR. MC DANIEL: Yes, I will give you his telephone number; I have got it in my office.

Questions continued by Mr. Eason:

Q As part of your employment duties, did you give any advice concerning Senatorial or House redistricting to various members of the board?

A No, sir.

Q I believe you further stated that you were quite familiar with the Chavez case and other --

A I was generally familiar, yes, sir.

Q And, the requirements necessary to be met in order for redistricting to be constitutional?

A As I understand them.

Q Do you know actually who drew the final map and plans that were accepted by and made the action of the redistricting committee of the Redistricting Board of Texas on October 15th and October 12th of this year for the House and Senate?

A Who actually drew them?

Q Yes, sir.

A No, sir, I don't know who drew the final product.

Q Are you familiar with the plan?

A Yes, sir, with a few months absence from it.

Q I am going to hand you a map which shows the - - - - - reports to be the Texas Senate Districts as enacted on October 15th.

A Yes, sir.

Q Are you familiar with the lines there that purport to set out District 21?

A Yes, sir.

Q And, I believe Districts 19 and 26, which are solely within Bexar County, are completely embraced by 21, is this correct?

A Yes, sir.

Q And, if you know, Senator Bernal is the present Senator

from --

Well --

A District 26.

Q District 26 and Coathman from 1971

A Yes, sir.

Q And, I believe that Wayne Connally, who has other
aspiration at this time, is the past Senator from the
lower district?

A Yes, sir.

Q Bearing in mind the rules that were laid out in the
Chavez case and other cases having to do with the
constitutional requirements of redistricting, would you
consider that to be a contiguous and compact district?

A I don't know. This is speculation. I don't know
whether I should answer that or not. At least in my own
mind I think that is -- would be a constitutional
district, yes, sir.

Q I believe the question was "contiguous and compact".

A Contiguous and compact? Yes, sir.

Q Did you furnish in your memoranda either voting records
or political, ethnic, racial information to any of the
members of the board or anyone else in regards to the
area subscribed in District 31?

A Yes, sir. That information was available on the maps.

Q Did you supply it to anyone that you can recall?

A Not that I can recall specifically, no, sir.

Q And, you of your own knowledge could not know whether or not --

Q You say it was available?

A Yes.

Q But you do not know whether that was weighed as to the ethnic, political and racial circumstances?

A No, I really couldn't --

Q I have no idea why a given line was drawn in a given place.

Q In your research did you determine what the political records, we will say, for the northeast part of San Antonio would have been since, I believe you said, 1962 through 1964 that you went back.

A '64 or '68.

Q Anyway, in that area do you know what the voting records would have been for the northeast part of San Antonio?

A The map would probably show a given tendency.

Q Yes, sir. You don't recall at this time, though, what it shows?

A No, sir, I really don't.

Q Are you familiar with Olmos Park, Terrill Hills and Alamo Heights?

A Yes, sir, I know that part of town.

Q Do you know whether or not that is what you might turn

as a Republican stronghold?

A Probably likely to be; it is a very well-to-do part of town.

Q And, you don't know of your own knowledge that they have a Republican county chairman, commissioner and Republican J.P.'s?

A No, sir, I sure don't.

Q I think this map shows even in more close detail Bexar County where District II extends almost to the center of town and taking the southeast part?

A Yes, sir.

Q Would you say there is a community of interest between the people of northwest San Antonio and, say, the people of Duval, Jim Hogg and Starr Counties?

A I couldn't answer that question. I really --

I have never been able to determine what "community of interest" is.

Q Did your research and your memoranda include such things as community of interest?

A No. As I say, I don't know what it is.

Q I understand you personally --
But, I didn't know whether you had investigated into that or not.

A No, sir.

Q You made no attempt to go into that?

Q I suppose the only way that could possibly be done is to just try to find census information that goes into income brackets, and that information to my knowledge was not even available and we certainly didn't use it.

Q But, in any event you made no investigation into that at all?

A No.

Q And, you had no information regarding that?

A No, sir.

Q And, I am not trying to qualify you as an expert, Mr. Mosser, but in your modest opinion do you feel that that is a reasonable, fair and equitable district?

A Well, I don't think I should give an opinion. I am not sure I am supposed to.

Q Well, this is subject to objection at the time it is introduced or offered for evidence. Do you have an opinion?

A I think I had better ask Sam first.

Q Well, we don't seem to be able to have Sam available during all of this questioning. Your approval was not sought?

A No.

Q In any of these matters?

A No, sir.

Q Do you have Senator Ward's telephone number

available?

A Yes, sir. I have it. I have it.

Q Will you furnish that to me this afternoon?

A Certainly.

MR. EASON: I believe that is all.

MR. IDAR: Does anybody else have any questions of this witness?

MR. MC GUIRE: Just one minute.

Questions continued by Mr. Eason:

Q Mr. Eason, you don't have any plans to leave town?

A No, sir.

Q This is not in the nature of a "who-does-it" but since there is a question concerning the availability of these

records --

A Yes, sir.

Q -- I may want to interrogate you about them after I get the chance to look at them -- if I get it.

A Certainly.

Q And, you will be available and you will be on tap?

A Yes, sir.

MR. EASON: Thank you.

THE STATE OF TEXAS)

COUNTY OF _____)

I, _____, a Notary Public for

do hereby certify that _____

undersigned Authority on this the _____ day of _____

A.D. 1972.

Notary Public in and for
County, Texas.

County, Texas. The following named person, to-wit: _____

_____ who was by me duly sworn to testify to the

truth and nothing but the truth of his knowledge concerning a

questioning the matter in controversy in this cause, that

he was thereupon carefully examined upon his oath and his

testimony reduced to writing and read by me.

The deposition is a true report of the testimony given

by the witness and that the said witness read the same and

acknowledged his name therein.

I further certify that I am neither

attorney or counsel for, nor related to or employed by, any

of the parties to the action in which this deposition is

taken, and further that I am not a relative or employee of

any attorney or counsel employed by the parties hereto or

materially interested in the action.

IN WITNESS WHEREOF I have hereunto set

my hand and affixed my Notary seal on this the _____ day

THE STATE OF TEXAS)
COUNTY OF TRAVIS)

I, JACK D. STEIN, a Notary Public duly
commissioned and qualified in and for the County of Travis,
State of Texas, do hereby certify that, pursuant to agreement
of counsel, there came before me on the 29th day of December,
A.D. 1971, at 2:00 o'clock P.M., at the offices of the
Attorney General, Supreme Court Building, Austin, Travis
County, Texas, the following named person, to-wit: GREGORY
DEAN HOOVER, who was by me duly sworn to testify to the
truth and nothing but the truth of his knowledge touching and
concerning the matters in controversy in this cause; that
he was thereupon carefully examined upon his oath and his
examination reduced to typewriting under my supervision;
that the deposition is a true record of the testimony given
by the witness and that the said witness read the same and
subscribed his name thereto.

I further certify that I am neither
attorney or counsel for, nor related to or employed by, any
of the parties to the action in which this deposition is
taken, and further that I am not a relative or employee of
any attorney or counsel employed by the parties hereto or
financially interested in the action.

IN WITNESS WHEREOF I have hereunto set
my hand and affixed my Notary seal on this the _____ day

of _____, A.D. 1972.

JACK D. STYER, Notary Public
in and for Travis County, Texas

My Commission expires 1st day of June, A.D. 1973.